83-314

Office Supreme Court, U.S.
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NUMBER: _____

IN THE SUPREME COURT OF THE UNITED STATES

1983 TERM

ANTHONY OSTRIC, Petitioner,

VERSUS

THE CORPORATION OF ST. MARY'S COLLEGE

NOTRE DAME ET AL., Respondents.

ON WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ANTHONY OSTRIC

Pro se

1114 FOSTER AVENUE

SOUTH BEND, IN 46617

219-234-9713

QUESTIONS PRESENTED FOR REVIEW

In its opinion* regarding the instant case, the Seventh Circuit Court of Appeals declared:

> The question of whether to dismiss a complaint for failure to amend rests within the sound discretion of the district court. The district court will not be reversed absent a showing of abuse of discretion. See Carl Locasio v. Teletype Corporation, No. 82-1354, slip op. (7th Cir. Dec. 2, 1982), Beshear v. Weinzapfel, 474 F.2d 127 (7th Cir. 1973). The plaintiff in this case was ordered to file an amended complaint within sixty days. The plaintiff never filed an amended complaint, but instead appealed the judge's order to this court, filed a motion for relief from judgment, and a motion for determination of plaintiff's entire case. In short, plaintiff did everything but file an amended complaint. Nine months after the court ordered the plaintiff to amend the complaint, the district court granted the defendants' motion to dismiss /sic/ for failure to amend /sic/ complaint. We cannot conclude that the district court abused its discretion in dismissing plaintiff's case. Pavilonis v. King, 626 F.2d 1075 (1st Cir. 1980).

The questions for review are:

I. Whether, within the meaning of Rule 17.1 (a) of the Supreme Court of the United States, this Court of Appeals "has so far departed

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* App. A. in Appendices, I., pp. 19a-20a.

from the accepted and usual course of judicial proceedings, . . . /as well as/ so far sanctioned such departure by . . . /the trial/ court, as to call for an exercise of this /Supreme/ Court's power of supervision" in the instant case.

A. Whether, in sanctioning the Trial Court's decisions, particularly by affirming the dismissal of this case "due to plaintiff's failure to amend the complaint pursuant to the court's order", the Court of Appeals rendered a decision "in conflict with applicable decisions of . . . /the Supreme/ Court" of the United States, within the meaning of Rule 17(c) of the latter.

B. Whether this Court of Appeals grossly misapprehended and/or mispresented the facts relevant to the issues presented for review, based its decisions on such misapprehension of the facts, and failed to adhere to proper procedure in reaching a decision in dealing with the fundamental issues that follow.

1. Whether the Petitioner's Complaint gave the Defendants (Respondents) "fair notice of what . . . /his/ claim is and the grounds upon which it rests . . .";*

2. Whether there existed (a) a continuing and civil conspiracy against the Petitioner under 42 U.S.C. §§ 1983, 1985, and 1986 (b) engaged in by all Defendants and (c) the Petitioner's other closely interrelated claims stemming from the same conspiracy;

3. Whether the Defendants' (Respondants') Motions to Dismiss are valid and, assuming as the Court below held, that they are, whether the Trial Court resolved all matter of doubt in favor of the Plaintiff (Petitioner);

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* Conley v. Gibson, 78 S.Ct. at 103, 355 U.S. at 48 - cited by Wright, Charles Alan, Handbook of the Law of Federal Courts, (Third Ed., 1976), p.323.

4. Whether the proper course for the Plaintiff (Petitioner) in the instant case in which Defendants failed to answer was to move for a default judgment under Federal Rule of Civil Procedure 55;

5. Whether the U.S. Magistrate was authorized, under the circumstances in the instant case, to conduct hearings on Defendants' dispositive pretrial Motions to Dismiss and to submit to the Trial Court's judge proposed findings of the facts and conclusions and recommendations under 28 U.S.C. §§ 636(b) and (c) without consent of the parties;

6. Whether the proper course (1) for Defendants in the instant case in which they failed to answer, or before the pleadings were closed, was to seek a judgment on the pleadings "pursuant to Rule 12(c) and (h) F.R.C.P.", (2) for the Trial Court to grant such a judgment, and (3)

for the Court of Appeals to sanction it.

II. Whether the Trial Court's proceedings together with the decisions below taken as a whole, including deprivation of Petitioner's constitutional rights, particularly those of freedom of speech, due process of law, and "right to jury determination",* represent "a gross miscarriage of justice". **

A. Whether the management of the judicial administration was performed by the Courts below in a way as to seek truth and justice in accordance with the provisions of Federal Rules of Civil Procedure "to secure the just, speedy and inexpensive determination of . . . /Petitioner's/ action", within the meaning of Rule 1 of

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* Rogers v. Missouri Pacific R. Co., 352 U.S. 500, 510 - cited by Stern, Robert L. and Eugene Gressman, Supreme Court Practice, Fifth Ed. (1978), p.293.

** E.G. Thompson v. City of Louisville, 362 U.S. 199; Washington v. United States, 357 U.S. 348 - cited by Stern and Gressman, id., p. 299.

the latter, or were they involved in systematic distortion of the truth and obstruction of justice - through the Trial Court's action and the Court of Appeals' sanction -

1. In granting Defendants' Motions to Dismiss;

2. In not entering default judgment sought by the Petitioner against Defendants;

3. In ordering that the Petitioner file an amended complaint;

4. In denying the Petitioner's "Motion for Determination of the Plaintiff's Entire Case . . .";

5. In failing to rule upon the Petitioner's "Motion for Reversal or Amendment of the Court's Order of December 4, 1981";

6. In considering the Defendants' "Motion for Judgment on the Pleadings for Failure to State a Claim Upon Which Relief Can Be Made" as a bona fide motion and granting it;

7. In entering, on December 7, 1981, a final order of dismissal "due to plaintiff's failure to amend the complaint pursuant to the court's order"; and

8. In denying by its order of January 6, 1982 the Petitioner's "Motion For Relief from Judgment and Order" without any explanation.

List of other parties to this case besides those included in the caption on the cover is as follows: the Congregation of the Holy Cross, Notre Dame; William A. Hickey, Vice-President and Dean of Faculty of St. Mary's College, Notre Dame; Rita Mary Cassidy, Professor of this college; Donald M. Horning, Professor of this college; John M. Duggan, President of this college; Jason D. Lindower, Controller of this college; Michael R. McKee, Professor of this college; Sr. Rose Bernard Tarleton, Professor of this college; Thornburg, McGill, Deahl, Harman, Carey and Murray, legal firm; Frederick F. Thornburg, associate of this legal firm; Thomas C. Murray, associate of this legal firm; Indiana Civil Rights Commission (hereinafter ICRC); Mary W. Shafer, Commissioner of the ICRC; J.L. Maynard, Director of the ICRC; John C. Carvey, Chairperson of the ICRC; Theodore L. Sendak, Attorney General of Indiana; and John W. Montgomery, Judge of St. Joseph Circuit Court of South Bend, Indiana.

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OPINIONS BELOW

The opinion of the Court of Appeals (App. A, pp. 1a-21a) is not reported. The opinion of the District Court (App. B-F, pp. 22a-35a) is not reported. The opinion of St. Joseph Circuit Court, South Bend, Indiana (App. H, pp. 37a-38a) is not reported. The opinion of Indiana Civil Rights Commission (App. I-K, pp. 39a-46a) is not reported.

STATEMENT OF JURISDICTION

The judgment of the court of appeals (App. L, pp. 47a-48a) was entered on March 1, 1983. A petition for rehearing was denied on March 28, 1983 (App. M, pp. 49a-50a). On May 23, 1983, Honorable John Paul Stevens, Associate Justice of the Supreme Court of the United States extended the time within which to file a writ of certiorari to and including July 29, 1983, and on May 31, 1983, the same Associate Justice further extended the time for filing a petition for writ of certiorari to and including August 25, 1983. A motion for exten-

sion of time to file petition for rehearing was denied on March 23, 1983 (App. N, pp. 51a-52a). Judgment for the district court (App. C, pp. 53a-54a) was entered on December 7, 1981. The judgment of St. Joseph Circuit Court, South Bend, Indiana (App. P, p. 57a) was entered January 29, 1979. A motion for relief from order was "overruled" by St. Joseph Circuit Court (App. Q, p. 62a) on April 26, 1979. An appeal was dismissed by a commissioner of the ICRC "who at the same time . . . affirmed (/its/ Director's findings)" on October 10, 1978 (App. I, p. 42a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1), of the Court of Appeals under § 1291 and that of the District Court under § 1331, supra - Federal question.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

The pertinent parts of the text of the following Constitutional Provisions, Statutes, Ordinances involved in the instant case are

set forth in Appendices, II. .

1. U.S. Const. Art. I, sec. 10. cl. 1, Art. III, sec. 2, Amend. I, Amend. V, Amend. VII, Amend. XIV, sec. 1 (App. A*, pp. 181a-182a).

2. "Civil Rights": Civil Rights Act of 1964, sec. 703(a)(1)(2), sec. 704(a); 42 U.S. C. § 2000e-2.(a), § 2000e-3.(a) (App. B*, pp. 183a-184a); 42 U.S.C. §§ 1983, 1985(b)(c), 1986 and 1988 (App. C*, pp. 185a-189a); Age Discrimination Act of 1967, sec. 623(a), sec. 623(b) (App. D*, p. 190a); Indiana Civil Rights law IC 1971, 22-9-1 (App. E*, pp. 191a-197a).

3. Federal Magistrates Act of 1979 (Supp. 1980), 28 U.S.C. § 636(b) and § 636(c) (App. F*, pp. 198a-202a); Magistrates Rules of the U.S. District Court for the Northern District of Indiana (App. G*, pp. 203a-205a).

4. Administrative Adjudication Act of the State of Indiana - IC 1971, 4-22-1 (App. H*, pp. 206a- 217a).

5. Articles of Incorporation of the Corpo-

ration of St. Mary's College, Notre Dame (App. I*, pp. 218a-223a).

6. Contractual Agreement between St. Mary's College, Notre Dame, IN and the Petitioner (App. J*, pp. 224a-229a).

STATEMENT OF THE CASE

The Petitioner, Anthony Ostric, a former full professor of Anthropology and Sociology at St. Mary's College, Notre Dame, Indiana, is certain that, in the instant case, the decisions below, including court's denial of the Petitioner's right of trial, in particular, his right of trial by jury, represents "a gross miscarriage of justice."* It is therefore the Petitioner's firm conviction that his case presents questions of great importance and that, under the circumstances, only this most Honorable Court can decide these questions.

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* E.G. Thompson v. City of Louisville, 362 U.S. 199; Washington v. United States, 357 U.S. 348 — cited by Stern, Robert L. and Eugene Gressman, Supreme Court Practice, Fifth Ed. (1978), p. 299.

1. The Petitioner - a lay in matters of law yet unable to find a lawyer to represent him* - brought, on his own behalf, this civil case (to be tried by jury) before the United States District Court for the Northern District of Indiana, South Bend Division, Honorable Allen Sharp, Judge. He commenced his action (File No, S79-256) by filing, on August 31, 1979, his Complaint against St. Mary's College, Notre Dame and 18 other Defendants previously named (p.vii); he did so only after he became certain that his plead-

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* The Equal Employment Opportunity Commission (hereinafter EEOC) in its NOTICE OF RIGHT TO SUE, issued to the Petitioner, August 8, 1979, notified the latter that - "if . . . /he/ cannot afford or . . . /was/ unable to obtain a lawyer to represent . . . /him/, . . . the Civil Rights Act of 1964, as amended, 42 U.S.C. /§/ 2000e-5(f)(1) permits the U.S. District Court having jurisdiction in . . . /his/ case to appoint a lawyer to represent . . . /him/"; subsequently, on August 31, 1979, the Petitioner filed his Motion For Appointment Of Counsel with the Trial Court, whose Judge, Honorable Allen Sharp, denied it on September 25, 1979. Then, on October 1, 1979, this Judge reversed himself sua sponte and officially informed the Petitioner, through his legal Clerk, Marty Kus, that the Trial Court decided to appoint counsel for the Petitioner. This Judge's decision was not carried out.

ing is "so construed as to do substantial justice";* and that "the claim/s/ . . . /are/ stated in general terms (as the Rules permit and are intended to discourage battle over mere form of statement)";** and as " the Court had emphasized that rules require the Complaint to give the Defendant/s/ 'fair notice of what the plaintiff's claim/s/ . . . are and the grounds upon which . . . /they/ rest/-/'".*** That the Petitioner's Complaint is so construed can be seen from the appended excerpts from the Petitioner's Complaint (App. Y, Z-Z/4, Z/6, pp. 73a-151a, 165a-180a) and from the presentation that follows.

2. In his Complaint (NR. 1 § 1, p. 1) the Petitioner asserted that since Fall of 1976, "his constitutional and other rights and privileges guaranteed by the United States Consti-

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* Rule 8(f), Federal Rules of Civil Procedure.

** Wright, Charles Alan, Handbook of the Law of Federal Courts (1976), p. 321 (footnote omitted).

*** Conley v. Gibson, 78 S.Ct. at 103, 355 U.S. at 48, cited by Wright, id., p. 323.

tution and other laws and legal provisions deriving from it . . . were denied, abridged, violated . . . by the Corporation of St. Mary's College, Notre Dame /IN/ (hereinafter 'St. Mary's College') and Defendants the Congregation of the Sisters of the Holy Cross (hereinafter 'the Sisters of the Holy Cross'), William A. Hickey, Donald M. Horning and Rita Mary Cassidy/; they/ engaged in numerous and various improper, unfair . . . and unlawful (concerted) conspiratorial actions (by commission and/or omission) against . . . /Petitioner/ to accomplish an unlawful purpose: deprivation and/or denial of . . . /Petitioner's/ equal rights (privileges) and opportunities, and his dismissal or forced resignation, and most recently (June 1978) forced retirement" (App. Y, pp. 74a-75a). Defendants John Duggan, Jason D. Lindower, Michael R. McKee and Sister Rose Bernard Tarleton later (after July 1975) joined this conspiratorial group (hereinafter the above named group of nine (9) Defendants will be referred to as "Administration and Faculty")

by engaging themselves also in the above described concerted actions against the Petitioner, constituting the same continuing conspiracy under 42 U.S.C. §§ 1985 and 1986 for the same described purpose (App. Y, p. 75a).

After July 1975, the Defendants Administration and Faculty were joined by another group of Defendants including two attorneys, Frederick F. Thornburg and Thomas C. Murray and the law firm of which they are a part: Thornburg, McGill, Deahl, Harman, Carey and Murray (hereinafter this law firm and these Defendants Attorneys will be referred to as "the Lawyers") to become in their turn an integral part of the above described civil conspiracy against the Petitioner by engaging themselves in similar concerted actions against the latter and for the same conspiratorial purpose (ib.).

After February 1978, the remaining group of Defendants consisting of Mary W. Shafer, Commissioner of the ICRC; J.L. Maynard, Director of the ICRC; John C. Carey, Chairperson of the ICRC; Theodore L. Sendak, Attorney

General of Indiana; Carol Ann Bowman, Deputy Attorney General; and John W. Montgomery, Judge of St. Joseph County Circuit Court, South Bend, Indiana (hereinafter referred to as "Public Officials") willfully joined the two other groups of Defendants named above in their continuing civil conspiracy under 42 U.S.C. §§ 1985 and 1986 as well as under § 1983. In doing so, they frustrated all Petitioner's efforts in seeking justice and relief in this matter (App. Y, pp. 76a-77a).

Multiple causes of action are presented in the Petitioner's Complaint (§§ 7.-12., pp. 2-3) as is an ample set of facts (§§ 13.-152., pp. 3-70), throughly documented, in support of his claim showing that the Petitioner "is entitled to relief" (Rule 8(a)(2), supra) as a victim of the Defendants' following actions:

(1) a continuing civil conspiracy under 42 U.S.C. §§ 1985 (b) and (c) and § 1986 (App. C*, pp. 185a-189a) as well as under § 1983 (id., p. 185a) including clear in-

stances of misconduct, false presentation, libel and perjury (App. Y, pp. 74a-75a);

(2) Discrimination because of the Petitioner's personal and cultural world view, including his religion (beliefs) and personal and cultural values deriving from his national origin or ancestry (id., pp. 77a-78a).

(3) retaliation because on several occasions the Petitioner made charges, filed complaints and acted as witness against St. Mary's College and some (powerful) members of its community (ib.,);

(4) breach of contract, contractual and other agreements between the Petitioner and St. Mary's College accompanied with arbitary illegal actions against the Petitioner, such as deprivation of his regular salary, denial of his sabbatical leave, denial of exemption from retirement at age 65 and not responding to his application for a new opening (ib., 79a).

In his Complaint, jurisdiction of the Trial Court is invoked under 28 U.S.C. § 1331

(App. Y, p 74a) and the constitutional provisions, statutes, ordinances, laws and regulations which - according to the Petitioner's claims - have been violated by the Defendants various unlawful actions constituting several causes of action described above (pp. 9-10) are specifically stated (id., pp. 76a-77a); however, the Petitioner asserts that - based on his case as a whole and particularly on the ample set of facts contained in his Complaint (§§ 13.-152.; see App. Z, pp. 80a-131a and App. Z/1, pp. 132a-135a) - his claim of conspiracy is the pivotal one and all other claims made by the Petitioner against all Defendants are closely interrelated and stem from the same civil conspiracy engaged in by all Defendants.

In the Conclusion of his Complaint (pp. 71-72), and, in accordance with Rule 8(a), Federal Rules of Civil Procedure, the Petitioner clearly made "a demand for judgment for the relief to which he deems himself entitled" with his "claim against . . . /each

of/ defendant/s/ . . . for a sum certain," within the meaning of Rule 55(b)(1), supra; in addition, the Petitioner's claim of total pecuniary, compensatory and punitive, damages against all Defendants is for a sum of $8,931,600.00.

By his Affidavit in support (dated August 31, 1979), attached to his Complaint, the Petitioner did "certify (under oath) that . . . the statements (in the foregoing and attached Complaint) are true and correct and the presentation of statements of facts of the claim is made . . . upon . . . (his) personal knowledge of said facts" (emphasis added).

3. On September 28, 1979, on behalf of Defendants Administration and Faculty, Vincent P. Campiti, one of their attorneys,* filed untimely a Motion To Dismiss together with a

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* Their second attorney being Arthur A. May. Contrary to the provisions of Rule 5(a), supra and Rule 5 of the Trial Court, this attorney never served his formal written appearance upon the Petitioner. Attorney Vincent P. Campiti never properly, nor timely served his formal appearance upon the Petitioner.

Memorandum in Support; stated in this Motion, the Defendants "move that . . . /the Petitioner's/ complaint be dismissed under rules 8, 10 and 12 on the ground that the complaint is basically an incomprehensible, . . . unclear, . . . pleading consisting of . . . immaterial, . . . and scandalous matter. It is in violation of the Federal Rules of Civil Procedure and beneath the dignity of this Honorable Court." (Emphasis added.)

On October 12, 1979, on behalf of Defendants Public Officials, Theodore L. Sendak, Attorney General, by Robert F. Colker, Assistant Attorney General, filed a Motion To Dismiss (together with a Memorandum) in which it was stated that they "move the Court to dismiss . . . /the Petitioner's/ action under Federal Rule of Civil procedure 12(b)(6), for the reason that the . . . /Petitioner/ has failed to state a claim upon which relief can be granted."

On October 17, 1979, the Petitioner filed timely and under Rules 54(c) and 55(a) and (b)(1), /supra/ . . . his "Demand For Judg-

ment By Default", together with a Memorandum in Support, against Defendants Administration and Faculty in which the Petitioner claimed their said Motion to Dismiss, together with a Memorandum, was filed untimely, improperly, and for fraudulent and dilatory purposes, being therefore invalid. The Petitioner requested that the Clerk of Trial Court enter a default against these Defendants or alternatively that the latter be requested to file, within 10 days, an answer to the Petitioner's Complaint in form of a properly prepared responsive pleading (App. Z/3 and Z/4, pp. 139a-151a).

On November 7, 1979, on behalf of Defendants Lawyers, attorney R. Kent Rowe filed untimely a Motion to Dismiss (together with a Memorandum in Support) in which it was stated that these Defendants "move that . . . /the Petitioner's/ claim for relief be stricken and dismissed as to these moving Defendants in accordance with Rules 8 and 12(f), /supra/ . . . because said pleading is

replete with scurrilous, offensive and objectionable allegations and should not be permitted to remain of record; the form of claim for relief fails to comply with Rule 8 requiring that a pleading be 'simple, concise and direct'; said pleading is . . . unintelligible; and much /sic/ of it is immaterial . . . and in gross violation of the letter and spirit of Rule 8." (Emphasis added.)

On November 13, 1979, the Petitioner filed his "Response To The Attorney General's Motion To Dismiss" (the latter having been filed on behalf of the Defendants Public Officials) pursuant to Rule 7(b) of the Trial Court. In this pleading (NR. 8, p. 4), the Petitioner claimed that these "Defendants - by filing said Motion to Dismiss in . . . /said/ Court . . . - did not act in a way consistent with 'expeditious and effective administration of justice'; /and that/ they discharged neither administrative professional responsibilities, nor duties toward the /Petitioner/, a citizen of the United States." As stated above (p. 11), contrary to these

Defendants' allegations in their Motion to Dismiss, the Petitioner claimed that there are abundant facts in the Petitioner's Complaint (NR. 1, §§ 100-152, pp. 40-70; see also NR. 8, pp. 7-8; and App. Z, pp. 116a-131a) showing clearly, since March 1, 1978, Defendants Public Officials willfully participating (together with the Defendants Lawyers and Administration and Faculty) in continuing civil conspiracy (a) under 42 U.S.C. §§ 1985 (b)(c) and 1986 (App. C*, pp. 185a-189a) as well as (b) under § 1983, supra,(id.). These facts indeed amply show - without even considering the question of eventual liability of the Public Officials under § 1983 - Defendants (private persons) jointly engaged with Defendants Public /State/ Officials in various prohibited actions against Petitioner; they acted "under color of . . . /law and/ subject/ed/, or cause/d/ to be subjected . . . /the Petitioner/ to the deprivation of . . . rights, /and/ privileges . . . secured by the Constitution and laws" of the United States (App. C*, p. 185a); among others,

those secured by its Amendments I, V, VII, and XIV (App. A*, pp. 181a-182a).

These prohibited actions were made "under color" of Indiana Civil Rights Law -- IC 1971, 22-9-1 (App. E*, pp. 191a-192a) and Administrative Adjudication Act /of Indiana/ -- IC 1971, 4-22-1 (App. H*, pp. 206a-217a). In this pleading, the Petitioner prayed the Trial Court that these Defendants' "said dilatory claim without merits contained in said . . . 'Motion to Dismiss' and 'Memorandum' be rejected and their 'Motion to Dismiss' denied . . ." or alternatively, that said Defendants be required to file, within 10 days, their answer to the Petitioner's Complaint in form of a properly prepared pleading (NR. 8, pp. 8-9).

On November 20, 1979, the Petitioner filed his "Notice About Defendants' Contempt For The Federal Rules And Of Petitioner's Objections To Defendants' Motion To Dismiss" (NR. 9), namely against Defendants Lawyers; the Petitioner claimed Defendants Lawyers showed

"contemptuous disregard of the Federal Rules /illustrative of which is a provision in Rule 1 that the rules of procedure 'be construed to secure the just, speedy and inexpensive determination of every action'/ (emphasis added) and of the Rules of the . . . /Trial/ Court, their extreme arrogance towards . . . /said/ Court, a complete disdain for the . . ./Petitioner/ and their lack of respect for truth and justice . . ." (NR. 9, p. 1). The Petitioner pointed out that Lawyers "move/d/ the Court for an extension of time within which to file a responsive pleading to . . . /Petitioner's/ claim for relief . . . to and including the 30th day of October, 1979 . . . ." (emphasis added). Yet, without expressing any excuse or reason, they left the time to expire without filing their responsive pleading! Instead of the responsive pleading, they filed untimely, - 8 days after said extended deadline - their invalid "Motion to Dismiss." The Petitioner claimed that the latter is invalid for the following reasons: it was not filed timely; not served

properly to the Petitioner and it represents a dilatory plea, consisting of fraudulent and offensive matter which does not go to merits (NR. 9, p. 3).* Therefore, the Petitioner prayed that the Trial Court declare said "Motion To Dismiss" null and order these Defendants to file their responsive pleading within 10 days (id., pp. 6-7).

4. In the three months following the filing (August 31, 1979) of the Petitioner's Complaint, no proper step had been taken either by the Trial Court or by the Defendants; no ruling had been made either upon the Defendants' aforementioned "Motions to Dismiss" or upon the Petitioner's three aforesaid pleadings - succeeding his Complaint - even though each of the Petitioner's pleadings contained "two or more statements of a claim /requests/ made in the alternative" (Rule 8(a), supra). None of the Defendants

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* These reasons are similar to those for which the Petitioner claimed (on pp. 13-14) that the aforesaid "Motion to Dismiss" filed by Defendants Administration and Faculty was invalid.

ever filed a responsive pleading despite Rule 12(a), supra, which in its relevant part provides: ". . . The service of a motion permitted under this rule /including Motions to Dismiss/ alters this period /in the aforesaid Defendants' matter, 20 days/ to time as follows, unless a different time is fixed by order of the court: (1) if the court . . . postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the notice of the court's action." (Emphasis added.) Accordingly, the Petitioner concluded that - by its nonruling upon the Defendants' said "Motions to Dismiss" and by its Order of December 3, 1979 (App. S, p. 65a) - the Trial Court indeed, de facto, "postpone/d/ its disposition /of these "Motions"/ until the trial* on the merits." (Rule 12(a), supra.)

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* In the sense of "/a/ judicial examination and determination of issues between parties to actions . . . (citation omitted)" (Black's Law Dictionary (1979 ed.), p. 1348) - in the present case - by the judge, sua sponte without trial by jury even though the petitioner demanded a trial by jury.

It should be pointed out here that not only has the Trial Court failed to rule upon Petitioner's requests in all three above described pleadings, particularly when it failed to enter default and judgment "By the Clerk" as sought by the Petitioner under Rule 55(a)(b)(1) - but its clerk himself (A. Pope) refused to comply with Federal Rules of Civil Procedure. He made the following serious error, prejudicial toward the /Petitioner/, in form of a statement made in the folio of the docket of the above entitled cause: "Clerk's judgment (by default) not entered because responsive pleading /by Defendants/ already on file (per A. Pope)" even though no responsive pleading is on file in the instant case. This Clerk, as well as the Trial Court, continously refused to correct this serious error despite the Petitioner's persistent requests made in several of his pleadings filed with said District Court. (See: App. Z/5, pp. 161a-163a.)

5. On December 3, 1979, "/t/he within case /of the Petitioner's suit/ . . . /was/ submit-

ted to the Honorable G.B. Lee, United States Magistrate, for all necessary pretrial procedure . . . . within authority of his office." (App. S, p. 65a.)

On January 15, 1980, because 43 days had elapsed after the Trial Court's foregoing order with no action whatsoever in the instant case, the Petitioner filed his "Motion for Pretrial Conference" pursuant to the Federal Rules of Civil Procedure 1 and 16 and Local Rules 7 and 12. The Court failed to rule upon this Motion.

On January 21, 1980, after having received "Notice" (App. T, pp. 66a-67a) from the Trial Court Clerks's Office regarding the Petitioners "right to consent to have . . . /said/ Magistrate conduct any or all proceedings in a jury or nonjury civil matter, and order the entry of judgment . . .," the Petitioner declared himself "unwilling to consent," signed his "REFUSAL TO CONSENT" and filed it with the Court. (App. U, p. 68a.)

Furthermore, since during the more than

90 days that elapsed following the aforesaid Order by the Trial Court, the aforesaid Magistrate took no proper step in compliance with said Order, and because said Magistrate explicitly refused to rule upon the Petitioner's above mentioned "Motion For a Pre-trial Conference", the Petitioner filed, on March 17, 1980, his "Request For Placing Of . . . The Petitioner's Action Upon The Trial Calendar" (NR. 10-12) pursuant to Federal Rules of Civil Procedure 40 and 16, and Rule 12 of the Trial Court. The Trial Court failed to rule upon this Motion.

On April 23, 1980, the Petitioner filed his Application for Writ with the Seventh Circuit Court of Appeals (Cause No. 80-1541) under 28 U.S.C. § 1651(a) and Rule 21(c) of Federal Rules of Appellate Procedure requesting said Court of Appeals to issue an extraordinary writ requiring that the Trial Court (Honorable Allen Sharp, Judge) "promptly do what should be done in accordance with the Federal Rules of Civil Procedure, laws and

Constitution of the United States" (NR. 13, p. 4).

On May 3, 1980, Robert F. Colker, attorney for Defendants Public Officials filed with said Court of Appeals "Response to Application For Writ" and "move/d/ the Court to Deny and Dismiss the /Petitioner's/ Application for Writ . . . /stating/ that . . . /the entire instant/ action should be dismissed and all costs be assessed against the . . . /Petitioner/ and . . . /that he/ be ordered to pay the fees of defendants' attorney and all other expenses occasioned by this action." Yet, this "Response", prepared and filed by said Assistant Attorney General of Indiana, is <u>in direct violation</u> of Rule 21, <u>supra</u>, to which he referred, particularly Rule 21(b) which deals with Order Directing Answer" and provides that, "the answer to the petition /application/ be filed by the respondents and all other parties /only/ in the time fixed by the /Circuit Court's/ Order." There was no such

Order. In addition, said "Response" was written in language offensive to the Petitioner using words which are defamatory per se. Despite that, this Court of Appeals considered this "Response" as a bona fide pleading.

On August 5, 1980 - eight months after the Trial Court's Order involving the aforesaid Magistrate in the present case entered (App. S, p. 65a) and only once several inquiries were made by members of the Appellate Court's legal staff - the Petitioner received "Notice of Hearing" (App. V, p. 69a) from said Magistrate calling "/t/he hearings on defendants' separate and several Motions to Dismiss (ib.) . . . fixed on August 19, 1980."

On August 12, 1980, the Petitioner filed timely his "Objections to Magistrate's Calling Of The Hearings on Defendants' Separate and Several Motions to Dismiss", together with a "Brief Of Objections To Magistrate's Calling Of Hearings . . ." and Affidavit in support (NR. 14-16). The Petitioner took

this action pursuant to the Federal Rules of Civil Procedure, Rule 1 in particular; Federal Magistrates Act, 28 U.S.C., in particular § 636(b) (App. F*, pp. 198a-199a; and Rules M-2(a)(b), M-3(a) and M-4 of the Magistrates Rules of said District (App. G*, pp. 203a-204a); in accordance with these Rules, the Petitioner respectfully requested "that the Honorable Allen Sharp, Judge of the United States District Court, set aside the call of said hearings under the aforementioned Rules for the reasons that (1) it is not in compliance with said Rules; (2) there are no valid 'Defendants' Motions to Dismiss' filed with this Court of the above entitled cause which could be properly considered during said hearings; (3) /even if there were/ such pending valid 'Defendants' separate and several Motions to Dismiss' . . . properly filed, said United States Magistrate could not conduct any such hearings on such /dispositive/ Motions to Dismiss without the consent of all parties under the Federal Magistrates Act of 1979;

(App. F*, pp. 198a-202a; see also, App. G*, pp. 203a-205a);* the Petitioner filed his Refusal to Consent timely (January 21, 1980), and therefore (4) said hearings would not serve 'the best interest of justice'." (Emphasis added.) (NR. 14, p. 1) The Trial Court failed to rule upon the Petitioner's said pleading.

On August 19, 1980 - despite the Petitioner's said written "Objections To Magistrate's Calling of the 'Hearings . . .'" - said Magistrate held these "hearings" on this date and proceeded, as he put it, "in conformity with § 636(c) /sic/ of said act /i.e. the Federal Magistrates Act of 1979/" without objection by the Trial Court. Said Magistrate (together with the Trial Court) was aware that, as stated above, the Petitioner signed and filed (January 22, 1980) his "Refusal to Consent", and that - according to § 636(c) -

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* The cover sheet of the docket belonging to the instant case bears the following indication: "Dispositive Consent Refused"; this statement was added after the Petitioner's filing of said "Refusal to Consent."

it is only "(1) Upon the consent of the parties /that/ a . . . magistrate . . . may conduct any or all proceedings in a jury or non-jury civil matter and order . . . when specially designed to exercise such jurisdiction by district court . . ." (App. F*. pp. 199a-200a; App. G*, pp. 204a-205a). (Emphasis added.) The magistrate conducted and terminated these hearings improperly and without jurisdiction (See App. 2/5, pp. 153a-162a).

In an attempt to speed up the Court of Appeals' ruling upon the above said Application for Writ (described on pp. 23-24), the Petitioner filed his "Petition For Prompt Determination of Petitioner's Application for Writ" (NR. 17) with the Seventh Circuit Court of Appeals; this was followed by the filing of two similar pleadings, at the interval of a month, for the same purpose (NR. 18-19). Nevertheless, on December 16, 1980, the Court of Appeals entered its ruling as follows: "It is ORDERED that the Petition for writ of mandamus, is DENIED.

Petitioner has not sustained the burden of making out a case for this extraordinary relief."* Following this Court's denial, the Petitioner filed with this same Court of Appeals: (1) "Motion For Modifying (Reversing) the Court's Denial (Order) of December 16, 1981; and (2) Motion For Examination of the Petitioner's Cause By The Court In Banc," the latter of which was denied by said Court on February 3, 1981, the former unacknowledged.

On January 27, 1981, the aforesaid Magistrate filed his "Report of United States Magistrate In Response To Order Dated December 3, 1979" (App. W, pp. 70a-71a). In the introduction of this Report, this Magistrate implies that the latter was made following the Trial Court's Order entered December 3, 1979 "referring this case /sic/ to . . . Magistrate** for all necessary pretrial procedures

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*It is pertinent to point out that the Petitioner never filed "a petition for a writ of mandamus" as the Court alleged in this ruling (See on p. 24).

** It is pertinent to point out that it was not "this case," but "/t/he within case . . . which was submitted" to said Magistrate. (App. S, p. 65a).

and the formulation of a full and complete pretrial order pursuant to § 636(b) of the Federal Magistrates Act of 1968, as amended, and this report is submitted and filed with the court in conformity with § 636(c) of said act (emphasis added)." (App. W, p. 70a)

On January 30, 1981, the Trial Court entered its Order (App. X, p. 72a) stating that the Petitioner "is now given until February 17, 1981 to file full written objections" to the foregoing Magistrate's Report.

On February 4, 1981, the Petitioner filed his "Objections" (NR. 25) to the Magistrate's Report. In this pleading, addressed to Honorable Allen Sharp, Judge of the Trial Court, the Petitioner set forth his claim showing that the Magistrate's Report was prepared in clear violation of law; it was "the result of unauthorized, illegally called, and improperly conducted 'hearings'" (NR. 25, p. 1; see App. Z/5, pp. 153a-164a). In it, the Petitioner prayed: "1. That the Trial Court declare aforesaid . . . 'Report' invalid for

the reasons indicated above; and 2. That the Court exercise its jurisdiction in the Petitioner's case and provide him due process of law consistent with his prior pleadings" (NR. 25, p.5). The Trial Court failed to rule upon this pleading.

On March 2, 1981, the Petitioner filed with the Trial Court his "Motion For Expeditious Exercise Of This Court's Jurisdiction" in which he restated the same requests as those made in the foregoing pleading (i.e. "Objections . . .") and the following additional ones: - "That the /Trial/ Court accord to the /Petitioner/ 'full right to be heard according to law' (Code of Judicial Conduct, Canon 3(A)(4) and that his 'right of trial by jury . . . be preserved . . .' as provided by the Seventh Amendment to the Constitution of the United States. - That the Court correct its prejudicial error (against the Petitioner in the instant case)" (NR. 27, p. 5). Instead of taking heed of his adjudicative responsibilities and "dispos/ing/ promptly of the business of the court" in

the instant case (Code of Judicial Conduct, Canon 3(A)(5), the aforesaid Trial Court's Judge once more ignored the Petitioner's pleadings; he failed to rule upon this Motion.

On March 3, 1981, the Trial Court entered its Order together with Memorandum and Order, in a joint document (App. F, pp. 29a-35a), "confirm/ed and adopt/ed/ the Magistrate's conclusions as those of the Court" (id., p. 34a); /a/ccordingly, it . . . /was/ ordered that the . . . /Petitioner's/ motion for entry of default and default judgment* be DENIED; and /all three of the Defendants' above described/ (pp. 13-14) motions to dismiss be GRANTED, except with regard to the . . . /Petitioner's/ claim based on Title VII . . . and the . . . breach of contract claim . . . /and/ that . . . /he/ file an amended complaint limited to those claims in confor-

* As stated above (p. 14) in his Pleading (Z/3, p. 141a) the Petitioner requested only that "the clerk of this Court enter a default against /a group of/ Defendants, /i.e./ Administration and Faculty . . .."

mity with Rule 8 /sic/ . . ."

On April 8, 1981, the Petitioner filed his "Motion for Relief from Judgment" (NR. 31) pursuant to Rules 60(b)(3)(4) and (6) and requested that the Trial Court grant him relief from judgment contained in its Order of March 3, 1981 by setting aside the latter (id., p. 1) for the reasons thoroughly presented in said motion.

On April 14, 1981, the Trial Court denied the Petitioner's said "Motion for Relief from Judgment" without giving any reason for this denial (App. E, p. 28a).

On September 4, 1981, the Petitioner filed "Motion for Determination of . . . /his/ Entire Case . . ." (NR. 39); in it he moved that the Trial Court "examine the whole record of the above entitled cause and make determination of the /Petitioner's/ entire case, correct errors and overrule all the Court's decisions-denials-orders stated in its Order of March 3, and April 14, 1981 (see App, F, pp. 34a-35a and App.E, p. 28a) and

. . . provide . . . /the Petitioner/ with all proper relief requested since /commencing his instant action/ August 31, 1979 . . . . (NR. 31, p. 1)"; he claimed that the Trial Court's decisions-denials and orders, stated above, in particular the Court's order that the Petitioner amend his Complaint, are all "erroneous and present serious hardship" (id., pp. 1-2) to the latter. Furthermore, in said Motion, the Petitioner declared: "For the purpose of clarity, . . . /he/ considers it relevant to state here as follows: As . . . in several of his pleadings (filed since August 31, 1979, . . . that he does not intend to amend his Complaint, or to 'file an amended complaint* limited to claims . . . /of the Petitioner's/ . . .' as ordered by the Court's aforesaid Order entered March 3, 1981 (App. F, pp. 34a-35a); such an amendment would strike a vital blow to the . . . /Petitioner's/ whole action of which all claims

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* The Petitioner so informed the Trial Court as early as October 1, 1979 through its legal Clerk, Marty Kus (see above p. 5).

are closely interrelated and stem from the same civil conspiracy engaged in by all Defendants against the . . . /Petitioner/ . . ." (see above, p.11); the latter's said decision was supported by the accepted principle: "The law does not permit or require the doing of an act which will result only in loss." (See Black's Law Dictionary (1979 ed.), p.951) It is pertinent to also state here that those claims to which the Petitioner's amended Complaint would be limited, according to the Trial Court's said Order (of March 3, 1981) are already amply presented in the Petitioner's Complaint.

On November 24, 1981, the Trial Court entered its Order (App. D, p.26a) denying the Petitioner's aforesaid "Motion for Determination of the . . . /Petitioner's/ Entire Case . . ."; this Motion was denied not after considering the Petitioner's "entire case", as the latter requested, but only, as said Court stated, "/upon careful review of the /Petitioner's aforesaid/ motion and memorandum, /for which/ . . . this Court finds insuffi-

cient grounds therein to reverse this Court's prior ruling (emphasis added)." (App. D, p. 26a) It seems pertinent to point out that the Petitioner's said Motion was denied with no follow up - at that time, or ever - notifying the Petitioner that, "if he fails so to do /i.e. to amend his Complaint according to said Court's Order of March 3, 1981/, the /Petitioner's/ action shall stand dismissed with prejudice as to that day". (Webst's Federal Forms (1877), § 2510)*

On November 25, 1981, Vincent Campiti, attorney representing Defendants Administration and Faculty, filed with the Trial Court "Motion For Judgment On The Pleadings For Failure To State A Claim Upon Which Relief Can Be Granted" /NR. 44); in it these Defendants "pursuant to Rule 12(c) and(h) F.R.C.P. . . . request the court to enter Judgment on the Pleadings for the moving defendants on the ground that . . . /the Petitioner/ has failed

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* Furthermore, there were several instances in the instant case in which the Trial Court, Honorable Allen Sharp, Judge, did not carry out its decision (see above footnote, p.5) nor follow up on its Order (App. X, p.72a; see above, pp.32-34)

to state a claim upon which relief can be granted . . .." These Defendants were aware that - at that state of pleadings in the instant case - Rule 12(c) and (h), supra could not serve as proper legal grounds for filing the Defendants' Motion; and that they could not properly submit a defense of failure to state a claim upon which relief can be granted by motion for judgment on the pleadings. Rule 12(c), supra, provides in its relevant part:

> "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.. . ." (Emphasis added.)

The instant case was not closed at that time.*

On December 4, 1981, the Petitioner filed his "Motion For Reversal Or Amendment of the /Trial/ Court's Order of November 14, 1981," together with a Memorandum in Support and an Affidavit /NR. 45/; the Petitioner submitted this Motion under Rules 4 38(a,b), 39(a), 40,

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*For more detail regarding these Defendants' said filings, see App. 2/6, pp.166a-168a, 177a -180a.

50(a,b), 52(b,c), 54(b,c), 55(a,b,d), supra; 28 U.S.C. § 1292 and under the Fifth and Seventh Amendments to the Constitution of the United States /id., p.2/. In this Motion, the Petitioner prayed: "(1) That the /Trial/ Court reverse or amend its prior ruling contained in its Order of November 24, 1981 /App. D., pp.26a -27a/ after examining the . . . /Petitioner's/ entire case . . .; (2) That - if . . . /the Trial/ Court decides to make an Order of denial of the . . . /Petitioner's/ 'Motion For Reversal . . .' - the /Trial/ Court state in such Order that the latter is

> 'of the opinion that such order /of denial/ involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation . . ..'

as prescribed by 28 U.S.C. § 1292(b) /NR. 45, pp.3-4/."

The Trial Court refused to rule on this Motion and to consider any of the alternative requests made by the Petitioner.

On December 7, 1981, the Trial Court entered its final Judgment as follows:

> "This action came on for (hearing) before the Court, Honorable Allen Sharp, United States District Judge, presiding, and the issues having been duly (heard) and a decision having been duly rendered,
> It is Ordered and Adjudged that . . . /the Petitioner/ take nothing by his complaint and this case is dismissed."
> /App. C, pp.53a-54a/

It is pertinent to state here that - contrary to the Trial Court's allegations in its aforesaid Judgment - the Petitioner's case was dismissed without "this action . . . (coming) on for (hearing) before the Court /during which/ Honorable Allen Sharp, United States District Judge /would be/ presiding and /during which/ the issues /would/ have been duly (heard) . . . /and, therefore the Trial Court's said/ decision by which (this case is dismissed) . . . /has not/ been duly rendered . . .."

Besides, in its Order, entered also December 7, 1981, the Trial Court declared that, "in light of . . . /the Petitioner's/ failure to amend (complaint), the Court hereby enters a final order of /its/ dismissal." /App. C, pp.24a-25a/

It is equally pertinent to point out that the Trial Court entered its aforesaid Order of

Dismissal and Judgment following the Defendants' aforesaid "Motion On The Pleadings For Failure To State A Claim Upon Which Relief Can Be Granted" (filed November 25, 1981); and that by entering said Order, the Trial Court "grant/ed/ Judgment on the Pleadings to the moving defendant/s/" as the latter prayed the Trial Court in their "Motion For Judgment On The Pleadings . . ."; the Trial Court ruled so even though the Defendants' said "Motion" represents an unlawful filing which is neither in compliance with the Federal Rules of Civil Procedure, nor with the Rules of said District Court /see App. Z/6, pp.166a-168a, 177a-180a/

On December 31, 1981, the Petitioner filed his "Motion For Relief From Judgment and Order, Both Dated December 7, 1981" together with Brief in Support and an Affidavit pursuant to Rules 60(b)(3), 60(b)(4) and 60(b)(6), as well as Rule 1, of the Federal Rules of Civil Procedure (See App. Z/6, pp.165a-180a).

On January 6, 1982 - despite the fact that the Petitioner filed aforesaid "Motion For Relief From Judgment And Order . . ." /App. Z/6/ timely and properly in accordance with "General Rules of Pleading" contained in Rule 8(a), supra - the Trial Court simply declared in its final Order that,

> "This Court having carefully considered the record in this case, now DENIES said Motion. SO ORDERED /App. B, pp.22a-23a/ . . .

without giving any reason for its denial.

REASONS FOR GRANTING THE PETITION

First of all the Court of Appeals indeed "has so far departed from the accepted and usual course in judicial proceedings . . . /as well as/ so far sanctioned such a departure by . . . /the/ lower court that, as to call from exercise of this /Supreme/ Court's power of supervision."* The Court of Appeals did so in sanctioning the Trial Court's decisions (especially those contained in its Orders entered

*Rule 17(a), Rules of the Supreme Court of the United States.

March 3, 1981 (App. F, pp.34a-35a) and December 7, 1981 (App. G, pp. 24a-25a)), and above all in affirming the dismissal of this case (App. A, pp.1a-2a, 20a-21a) and in so doing, rendering its decisions "in conflict with applicable decisions of this /Most Honorable/ Court,"* notably Conley v. Gibson, 355 U.S. 41, at 45-48 (1957).

Furthermore, the Trial Court's and the Court of Appeals' proceedings and the decisions of both in sum - having resulted in the deprivation of the Petitioners's constitutional rights including those of freedom of exercise of religion, freedom of speech, the right to petition Government for a redress of grievances, right to property without due process of law, right of equal protection of laws, and especially "right to jury determination,"** represent "a gross miscarriage of justice." ***

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*Rule 17(c), supra.

**Rogers v. Missouri Pacific R. Co., 352 U.S. 500, 510 - cited by Stern, Robert L. and Eugene Gressman, Supreme Court Practice (1978), p.293.

***Thompson v. City of Louisville, 362 U.S. 199; Washington v. United States, 357 U.S. 348 - cited by id., p.299.

Indeed the record shows that the management of the judicial administration in the instant case was performed by the Courts below not in a way as to seek truth and justice in accordance with the provisions of Federal Rules of Civil Procedure "to secure the just, speedy and inexpensive determination of . . . /the Petitioner's/ action," within the meaning of Rule 1 of the latter, but to the contrary, the Trial Court's action and the Court of Appeals' action and sanction constituted involvement in systematic distortion of the truth and obstruction of justice.

In addition, there is a substantially large amount of money involved ($8,931,600) as the Petitioner's claim of total pecuniary, compensatory and punitive, damages against all Defendants.

I. A. and B.

Conflict with applicable decisions of the Supreme Court of the United States.

In Conley v. Gibson, 355 U.S. 41, at 45-48 (1957), the Court held that

> In appraising the sufficiency of the complaint we follow of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief.. . ..
> . . . .
> /T/he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim* that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.. . .. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of the pleading is to facilitate a proper decision on the merits. Cf. Maty v. Grasselli Chemical Co., 303 U.S. 197." (emphasis added.)

The sufficiency of the Petitioner's Complaint is clearly shown by the Statement of the Case and several extended excerpts from it or the Petitioner's other pleadings (see Appendices Y, Z, Z/1, Z/2, pp. 73a-138a). Both courts below recognize explicitly that in his complaint, the Petitioner did definitely prove a "set of facts in support of his claim which

*Rule 8(a)(2)

would entitle him to relief . . . /and that he did/ give the defendant/s/ fair notice of what . . . /his/ claim/s/ . . . /are/ and the grounds upon which . . . /they/ (rest)." Conley v. Gibson, supra; the Court of Appeals recognized it by declaring:

> The district court . . . held that the plaintiff had fulfilled the requirements for filing suit under Title VII. Broadly construed, the complaint successfully pleaded a claim under Title VII, 42 U.S. §§ 2000e-2 and -3 and also successfully pleaded a pendant state claim for breach of contract (emphasis added). (See. App. A, p.17a, and App. F, p.34a)

Therefore, both Courts below, based on their recognition that the Petitioner's "Complaint successfully pleaded . . . claim/s/" and this Court's decision in Conley v. Gibson alone, must have been aware - because of this conflict - that the latter could not be dismissed and that the Trial Court's decision to dismiss the Petitioner's Complaint represents an abuse of discretion and disregard for law, and the Court of Appeals' affirmation of the Trial Court's said decision "so far departed from the accepted and usual course of judicial proceedings . . . /and/ so far sanctioned such departure

by . . . /said/ lower court, as to call for an exercise of this Court's power of supervision." (Rule 17(a), supra.) This abuse of discretion and disregard for law by both Courts below is further manifest when one considers the fact that this Court restated its previous decisions more recently, in Haines v. Kerner, 404 U.S. 519, at 520-521 (1972) in which it held that

> "The District Court erred in dismissing . . . (Petitioner's) pro se complaint without allowing him to present evidence on his claims.
> . . . /A/llegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for opportunity to offer supporting evidence.. . ..
> . . . /W/e conclude that he is entitled to an opportunity to offer proof. . . .."

Gross misapprehension of the facts.

What follows will show that the Court of Appeals grossly misapprehended the facts relevent to the issues presented for review, based its decisions on such misapprehension of the facts and failed to adhere to proper procedure particularly in reaching its decision of March 1, 1983,

> "that the judgment of the said District Court in this cause . . . is hereby,

AFFIRMED, with costs, in accordance with the opinion of this Court entered this date /App. L, pp.47a-48a/."

What is presented in the Statement of the Case and that which follows below clearly show that this Court of Appeals' said opinion consists mostly of manifestly erroneous allegations contrary to the facts and inconsistent with themselves and the Court's other allegations.

The Court of Appeals' opinion contains the following allegations:

> "After a preliminary examination of the briefs, the court notified the parties that it had tentavively concluded that oral argument would not be helpful to the court in this case.. . .. /See App. A, footnote, pp. 1a-2a)
>
> . . . .
>
> Plaintiff applied for a writ of mandamus in an attempt to speed up the trial court's determination of this case in appeal No. 80-1541. That application was denied in an order dated December 16, 1980.. . .. /id., pp. 5a-6a/
>
> . . . .
>
> A. Validity of Defendant's Motions to Dismiss
>
> Plaintiff claims that he was entitled to a default judgment against all of the defendants for failing to file an answer within twenty days. Plaintiff filed a motion for default judgment on October 17, 1979 after the defendants had filed Rule 12 motions to dismiss on September 28, 1979 and on October 12, 1979. The judge refused to grant a default judgment because the entry of a default would heve

been a mere formality due to the existence of good cause to set it aside. The good cause to set a default aside was the fact that Ostric's complaint failed to state a claim upon which relief could be granted except as to a few claims; therefore the plaintiff was not entitled to judgment. In addition, the judge refused to grant a default judgment because the defendants had already filed their motions to dismiss when plaintiff asked the court to enter a default.

. . . .

B. Submission of the Case to a Magistrate

Plaintiff contends that the district court erred in referring the case to a United States Magistrate without his consent. The district court properly followed the procedure provided in 28 U.S.C. § 636(b)(1)(B).. . . /See App. A, pp. 7a-8a/.

. . . .

C. Dismissal of the Complaint with Leave to File an Amended Complaint

. . . .

(1) Immunity of the State Defendants

The district court did not err when it dismissed Ostric's suit against the Indiana defendants because they were absolutely immune from suit. (id., pp. 9a-10a/

. . . .

(3) Dismissal of the § 1983 Claim

To state a claim under Section 1983, a plaintiff must allege that a constitutional right was violated under color of state law. Adickes v. S.H. Kress & Co., 398 U.S. 144, 150 (1970). The district court dismissed Ostric's claim under Section 1983 for failing to demonstrate or allege sufficient state participation in the alleged conspiracy to deprive him of his rights.. . ..

Although Ostric alleges the existence of a conspiracy, his pleadings

fail to support that allegation. . . . The plaintiff failed to allege sufficient facts from which the district court could infer state participation in a conspiracy. /App. A, pp. 11a-13a/

. . . .

The district court properly held that the plaintiff failed to state a claim under Section 1983 because the remaining defendants, St. Mary's College, the Congregation of the Holy Cross, the named faculty members and other college personnel and the law firm and lawyers representing the college were not acting under color of state law.

(4) Dismissal of the § 1985 Claim

An action under Section 1985 does not require that a defendant act under color of state law; therefore, conspiracies by private parties are actionable under Section 1985. Griffin v. Breckenridge, 403 U.S. 88 (1971).. . . .

St. Mary's is not a state institution nor did any of the alleged conspirators attempt to deprive Ostric of his right of recourse to any state agency or court.. . . .

(5) Dismissal of §§ 1986 and 1988 Claims

To state a claim under Section 1986, a claim must be established under Section 1985. William v. St. Joseph Hospital, supra. Ostric failed to state a claim under Section 1985, therefore his section 1986 claim must fail for the same reasons. Therefore, the district court properly dismissed plaintiff's claim under Section 1986 . . . for failure to state a claim upon which relief could be granted.

. . . .

(7) Dismissal of Complaint with Leave to File an Amended Complaint

Pro se plaintiff Anthony Ostric filed a 74 page . . . complaint, which . . .

contains irrelevant comments and claims, and is so confusing that responsive pleading would be impossible. The defendants filed a motion to dismiss on that basis.. . .. We cannot conclude that the district court erred in ordering the plaintiff to amend his complaint to comply with Federal Rules of Civil Procedure 8.

D. Dismissal of the Case for Failure to Amend

The question of whether to dismiss a complaint for failure to amend rests within the sound discretion of the district court. The district court will not be reversed absent a showing of abuse of discretion. See Carl Locasio v. Teletype Corporation, No 82-1354, slip op. (7th Cir. Dec. 2, 1982), Beshear v. Weinzapfel, 474 F.2d 127 (7th Cir. 1973).. . .. Nine months after the court ordered the plaintiff to amend the complaint, the district court granted the defendants' motion to dismiss for failure to amend the complaint. We cannot conclude that the district abused its discretion in dismissing the plaintiff's case. Pavilonis v. King 626 F.2d 1075 (1st Cir. 1980).

III

For the above reasons the district court order dismissing plaintiff's case for failure to amend is affirmed. (Emphasis added.)

The above quoted allegations taken from the Court of Appeals' aforesaid opinion (See App. A, pp. 1a-21a) are erroneous and contrary to the facts contained above in the Statement of

the Case, aside from the Court's initially cited allegations in its footnote (See App. A, pp. 1a-2a) regarding oral argument. This allegation is also false because the fact remains that the Court has never "notified the parties that /it was/ tentatively concluded that oral argument would not be helpful to the court in this case." The Court's Notice, dated March 31, 1982 (See App. R, pp. 63a-64a) does not contain any such conclusion by the Court.

As for the Court's allegation regarding "writ of mandamus" (See App. A, footnote, pp. 5a-6a), the truth is that the Petitioner did not apply for such an extraordinary writ under Rule 21(a), Federal Rules of Appellate Procedure, but for a writ under Rule 21(c), supra, as presented above (pp. 23a-25a).

The Court's above cited allegations under the title: "A. Validity of Defendant's /sic/ Motions to Dismiss," contain nothing about the "validity" of the latter. What is written under this title indeed mispresents the facts which are very relevant to the issues present-

ed for review. As shown above, (pp.13-14), contrary to what the Court's allegations imply, the Petitioner did not file his "Demand For Judgment By Default" against all the Defendants, but only against Defendants Administration and Faculty. These Defendants' Motions to Dismiss as well as the second group of Defendants, Lawyers, alleged the Petitioner's Complaint to be "incomprehensible" or "unintelligible" and accordingly they, these Defendants, could move only to dismiss the latter "under Rule 8" and they did so even though they knew that their allegations were false and their Motions to Dismiss invalid; the reason these Motions to Dismiss were invalid is specifically presented above (pp. 14-21 and by App. Z/3 and Z/4, pp. 139a-151a). Based upon all this, or merely upon that which is directly preceding, (pp. 43-46), or even only upon the Court of Appeals' recognition that "the /Petitioner's/ Complaint successfully pleaded . . . /two claim/s/ . . ." (See above, p. 45; see also App. A, p. 17a), one

is compelled to recognize the Court of Appeals' allegations under A. (and C.(7) as well) as completely false and inconsistent with other allegations made in the same Court's opinion. Therefore, the Court of Appeals erred and contradicts itself in alleging under A. that

> "The /Trial Court's/ judge refused to grant a default judgment because the entry of a default would have been a mere formality due to the existence of good cause to set it aside. The good cause to set a default aside was the fact that Ostric's complaint failed to state a claim upon which relief could be granted except as to a few /sic/ claims. In addition, the Judge refused to grant a default judgment because the defendants had already filed their motions to dismiss when plaintiff asked the court to enter a default. /App. A, pp. 7a-8a/
> . . . .
> (7) . . .
> . . . Anthony Ostric filed a 74 page . . . complaint,* which is so confusing that responsive pleading would be impossible. The defendant filed a motion to dismiss on that basis (under Rule 8, /and not under Rule 12 as the Court alleged before/).. . .. We cannot conclude that the district court erred in ordering the plaintiff to amend his

---

* The truth is that the Petitioner's Complaint amounted to 71 and a half pages in all.

Complaint to comply with Federal Rules of Civil Procedure." (App. A, pp. 18a-19a)

Furthermore, it should be pointed out that this last, just quoted, allegation (under A.) regarding the second reason why "the judge refused to grant a default judgment" represents additional evidence of the Court of Appeals' distortion of the truth. As asserted above (pp. 13-14) the Petitioner, under Rules 54(c) and 55(a) and (b)(1), supra, requested that the Clerk of the Trial Court enter a default (see also App. Z/3 and Z/4, pp. 139a-151a) and, as stated above (p. 21), the Clerk refused to comply with Rule 55(a) and (b)(1); as the reason for his refusal to enter said default it was specifically stated on the folio of the docket: "Clerk's judgment (by default) not entered because responsive pleading /by Defendants Administration and Faculty/ already on file" even though no responsive pleading is on file in the instant case. The Clerk (A. Pope), as well as the Trial Court, continuously refused to correct this serious

error despite the Petitioner's persistent requests in several of his pleadings filed with said District Court. (See Z/5, pp. 161a -163a).

The Court of Appeals not only proceeded improperly in not resolving all matter of doubt in favor of the Petitioner and accepting the Defendants' allegations as truth (facts), but instead they proceeded in a biased manner as advocates in favor of the Defendants, as demonstrated in several already presented instances. Additional evidence in this regard is said Court's acceptance of the Defendants' allegations as its own and presenting them after modifying them so as to appear less absurd, as shown by the following. While the Defendants Administration and Faculty - as shown above (p. 13) - alleged the Petitioner's Complaint to be "an incomprehensible, . . . unclear, . . . pleading consisting of . . . immaterial, . . . and scandalous matter . . . in violation of the Federal Rules of Civil Procedure and beneath the dignity of this

Honorable Court . . . /emphasis added/" (Defendant Lawyers alleged similarly (see above pp. 14-15)), the Court of Appeals, in its above cited (pp. 53-54) allegations, modified the Defendants' allegations in declaring the Petitioner's Complaint as "contain/ing/ irrelevant comments and claims, and is so confusing that responsive pleading would be impossible. The defendants filed a motion to dismiss on that basis." (Emphasis added.)

In addition, it should be pointed out that for certain the Court of Appeals was aware that - contrary to their above cited allegations (pp. 47-48) - Rule 12(b)(6) of the Federal Rules of Civil Procedure cannot logically be applied unless the basic assumption of the truth of the complaint is made. A Motion to Dismiss is a preliminary matter, made in the case prior to the filing of an answer which would have clearly put the same case in issue. In effect, what the Defendants' Motions to Dismiss seek is to have the Petitioner denied access to the Court with-

out even an opportunity to present his evidence to the trier of fact. All such motions to dismiss for failure to state a claim (under F.D.R.C. 12(b)(6) are viewed with disfavor by the Court and should only be granted in the most clear cases. Madison v. Purdy, 410 F.2d 99 (5th Cir. 1969); Swartz v. Eberly, 212 F.Supp. 32 (E.D. Pa. 1962). The only requirement for a complaint is a "short, plain statement of the claim showing the pleader is entitled to relief" as stated in the Rule of Civil Procedure 8(a)(2). this rule only called for

> "pleadings in a federal court action to indicate that if the allegations in the complaint are established, the pleader is entitled to relief under the substantive law of jurisdiction. 5 Wright & Miller, Federal Practice and Procedure, Civil § 1204 (1969)".

Regarding the Court of Appeals' above cited (on p. 48) allegations under title "B. Submission of the case to a Magistrate", the Court of Appeals distorted the truth in declaring that

> "/1/ Plaintiff contends that the district court erred in referring the case

to the United States Magistrate without his consent. /2/ The district court properly followed the procedure procedure in 28 U.S.C. § 636(b)(1)(B).. . .."

In confronting the above allegation (number /2/) with the pertinent facts presented above (pp. 22, 25-31) and in his pleadings (see App. A/5, pp. 153a-164a), one is bound to conclude that this allegation represents an instance of irresponsible and offensive calumny which could be understood to have been made with malicious design to present the Petitioner as completely irrational. It appears even more offensive when one becomes aware that the improper involvement of said Magistrate in the instant case has been shown to the Court of Appeals in the Petitioner's aforementioned "Brief For Plaintiff Appellant" (pp.34-36, 38). Contrary to the Court of Appeals' false and calumnious allegations just cited, the Petitioner sufficiently demonstrated above (pp.22, 25-31) that said Magistrate was not authorized, under the circumstances in the instant case, to conduct hearings on the Defendants' dis-

positive pretrial Motions to Dismiss and to propose "findings of the facts and conclusions and recommendations under 28 U.S.C. §§ 636(b) and (c) without consent of the parties.

Contrary to the Court of Appeals' above cited (pp.48-49) allegations under the title "C", subtitles (3), (4) and (5), the Petitioner sufficiently demonstrated in his Complaint the existence of a continuing civil conspiracy directed against him under U.S.C. §§ 1983, 1985 and 1986 engaged in by all Defendants, and that the Petitioner's other claims against all Defendants are closely interrelated and stem from this same conspiracy; in other words (as indicated above pp.9-11), among the multiple causes of action presented in the Petitioner's complaint, a continuing civil conspiracy is the pivotal one. Therefore, as stated above (pp.34-35), to file an amended complaint without claim of conspiracy as ordered by the Trial Court's order of March 3, 1981 (see App. F, pp.34a-35a) would result in an enormous loss for the Petitioner because such an amendment of his complaint would strike a vital

blow to the Petitioner's whole action. To render it possible that this Most Honorable Court directly determine the validity of the Petitioner's claim regarding the existence of the above described conspiracy in the instant case, the Petitioner made a great effort and sacrifice in appending some very relevant extended excerpts from the Petitioner's complaint (see App. Y, pp.73a-79a; App. Z, pp.80a-131a, App. Z/1, pp.132a-135).

The above cited (p.50) allegations, regarding "the district court/'s/ grant/ing of/ the defendants' motion to dismiss for failure to amend the complaint (nine months after the Court's order to amend the complaint)" is erroneous; there was no such motion, in the instant case, filed by any of the Defendants. As shown above (pp.36-37), on November 25, 1981, Defendant Administration and Faculty filed their "Motion For Judgment On The Pleadings For Failure To State A Claim Upon Which Relief Can Be Granted"; in it those Defendants, pursuant to Rule 12(c) and (h) F.R.C.P. . . . requested the Court to enter Judgment on the

Pleadings on the ground that . . . /the Petitioner/ (had) failed to state a claim . . .." These Defendants were aware, as was the Trial Court, that - at that state of pleadings in the instant case - Rule 12(c) and (h), supra, could not serve as proper grounds for filing the Defendants' such Motion. Rule 12(c), supra provides in its relevant part:

> "After the pleadings are closed . . . any party may move for judgment on the pleadings." (Emphasis added.)

The instant case was not closed at that time. (See App. Z/6, pp.166a-168a, 177a-180a.)

What has already been presented in the instant Petition is sufficient to show convincingly that, taken as a whole, in their proceedings, the Trial Court of Appeals manifested "a serious departure from established procedure,"* within the meaning of Rule 17(a) of

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*ABA Commission on Standards of Judicial Administration, Tentative Draft of Standards Relating to Appellate Courts, § 3.11, p.21 (1976), cited by Richard Y. Holcomb, "Standards of Review," in Sec. B.2, Appellate Advocacy - Source Book, American Bar Association, Paul Marc Sandler, Editor, 1980, p.7.

this Court, and that their proceedings and decisions, or lack of them, definitely resulted in a "gross miscarriage of justice"* and, for the Petitioner, "a denial of substantial justice."**

At this point in this Petition, it becomes obvious that the management of the judicial administration was not performed by both of said Courts below in a way as to seek truth and justice in accordance with the provisions of Federal Rules of Civil Procedure "to secure the just, speedy and inexpensive determination of the . . . /Petitioner's/ action, "within the meaning of Rule 1 of the latter, but instead they were involved in persistent distortion of the truth and obstruction of justice; it becomes so - particularly through the Trial Court's action and the Court of Appeals' action and sanction in -

1. Granting Defendants' invalid Mo-

---

*Thompson v. City of Louisville, supra, p.299.

**ABA Commission on Standard Judicial Administration, op. cit., p.7.

tions to Dismiss (see above, pp.14-21, 51-52, 54-57; also App. Z/3 and Z/4, pp. 139a-151a).

2. In not entering default judgment sought (October 17, 1979) by the Petitioner against Defendants Administration and Faculty (see above pp.13-14, 21, 51-52, 54-55; see also App. Z/3, Z/4, Z/5, pp.139a-151a, 161a-163a);

3. In ordering (March 3, 1981, see App. F, pp.34a-35a) that the Petitioner file an amended complaint (see above, pp.34-36, 59-60; see also App. Z/6, p.166);

4. In denying the Petitioner's "Motion for Determination of the Plaintiff's Entire Case . . .", filed November 24, 1981 (see above pp.35-36);

5. In failing to rule upon the Petitioner's "Motion for Reversal of Amendment of the Court's Order of December 4, 1981" (see above, pp.37-38; see also App. Z/6, pp.167a-168a);

6. In considering the Defendants' "Motion for Judgment on the Pleadings for

Failure to State a Claim Upon Which Relief Can Be Made" (filed November 25, 1981) as a bona fide motion and granting it (see above, pp. 36-37, 40; see also App. Z/6, pp. 166a-168a)

(7) In entering, on December 7, 1981 "in light of plaintiff's failure to amend (his complaint), . . . a /Trial Court's/ final order of Dismissal" (see App. C, pp. 24a-25a) and in declaring in its judgement (App. O, pp. 53a-54a):

> "This action came on for (hearing) before the Court, Honorable Allen Sharp, United States District Judge presiding and the issues having been duly (heard) and a decision having been duly rendered,
> It is ordered and abridged that . . . this case is dismissed . . ." (emphasis added)

even though - contrary to this declaration - this action was dismissed without

> "(coming) on for (hearing) before the /said Trial/ Court /during which/ . . . /said/ Judge /would be/ presiding and /during which/ the issues would have been duly (heard) . . . /and therefore said/ decision /has not/ been duly rendered."

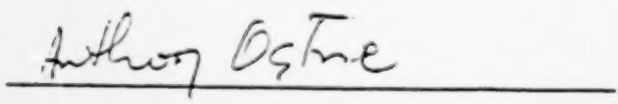
(8) In declaring, by the Court of Appeals,

that the District Court did not abuse its discretion; the Petitioner clearly showed the contrary in his pleadings, in particular in his aforesaid Brief (pp. 38-40), Reply Brief (pp. 17-25), Petition for Rehearing in Banc (pp. 9-10). In several other pleadings, the Petitioner demonstrated clearly that the Trial Court did abuse its discretion, but in particular in his aforesaid Motion For Relief From Judgment (see App. Z/6, pp. 168a-180a).

CONCLUSION

For these reasons, a writ of certiorari should be granted.

Respectfully submitted,



Anthony Ostric, Petitioner, pro se

August 22, 1983

NUMBER: _____

IN THE SUPREME COURT OF THE UNITED STATES

ANTHONY OSTRIC, Petitioner,)
)
v.)
) AFFIDAVIT
THE CORPORATION OF ST.)
MARY'S COLLEGE, NOTRE)
DAME, ET AL., Respondent.)

Anthony Ostric, being duly sworn under oath, does hereby state that he is the Petitioner of the above entitled cause; that he has read the foregoing PETITION FOR WRIT OF CERTIORARI and the affirmations therein are true and correct and the presentation of the statement of facts is made upon the Petitioner's personal knowledge of said facts.

Anthony Ostric

Anthony Ostric, Petitioner, pro se

Subscribed and sworn to before me this 22 day of August, 1983

Notary Public

My commission expires:

Feb. 13, 1986

NUMBER:_____

IN THE SUPREME COURT OF THE UNITED STATES

ANTHONY OSTRIC, Petitioner,

v.

THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME, ET AL., Respondent.

PROOF OF SERVICE

Anthony Ostric, being duly sworn upon his oath, states:

1. That he is the Petitioner,

2. That on the 24th day of August, 1983, he delivered personally three copies of the foregoing PETITION FOR WRIT OF CERTIORARI, with the Affidavit attached to it to:

R. Kent Rowe
900 St. Joseph Bank Bldg.
South Bend, IN 46601

Vincent Campiti
220 West Jefferson Blvd.
South Bend, IN 46601

and forwarded by First Class Mail, postage prepaid to:

George B. Huff, Jr.
Deputy Attorney General
State of Indiana
219 State House
Indianapolis, IN 46204

Anthony Ostric

Anthony Ostric, Petitioner

Office-Supreme Court, U.S.
FILED
AUG 25 1983
ALEXANDER L. STEVAS,
CLERK

83-314

NUMBER: _____

IN THE SUPREME COURT OF THE UNITED STATES

1983 TERM

ANTHONY OSTRIC, Petitioner,

VERSUS

THE CORPORATION OF ST. MARY'S COLLEGE

NOTRE DAME ET AL., Respondents.

ON WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

APPENDICES

TO THE PETITION FOR WRIT OF CERTIORARI

ANTHONY OSTRIC

Pro se

1114 FOSTER AVENUE

SOUTH BEND, IN 46617

219-234-9713

NUMBER: _____

IN THE SUPREME COURT OF THE UNITED STATES

ANTHONY OSTRIC, Petitioner,)
)
v.) PROOF OF SERVICE
)
THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME, ET AL., Respondent.)

Anthony Ostric, being duly sworn upon his oath, states:

1. That he is the Petitioner,

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Indianapolis, IN 46204

Anthony Ostric

Anthony Ostric, petitioner

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APPENDIX A

Unpublished Order Not To Be Cited
Per Circuit Rule 35

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

(SUBMITTED FEBRUARY 7, 1983)*

March 1, 1983

Before

Hon. WALTER J. CUMMINS, Chief Circuit Judge

Hon. WILLIAM J. BAUER, Circuit Judge

Hon. JOHN L. COFFEY, Circuit Judge

ANTHONY OSTRIC Plaintiff-Appellant,	)	Appeal from the United States District Court for the Northern District of Indiana, South Bend Division. No. 79 C 256 Allen Sharp, Judge.
No. 82-1031 vs.	)	
THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME, et al., Defendants-Appellees.	)	

ORDER

Pro se plaintiff, Anthony Ostric, appeals

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* The appellees in this case filed a motion to waive oral argument. After a preliminary examination of the briefs, the court notified

(footnote continued on next page)

from the district court's dismissal of his civil rights suit. The district court dismissed the case due to plaintiff's failure to amend the complaint pursuant to the court's order. For the reasons which follow, we hold that the district court did not abuse its discretion in dismissing plaintiff's case and we affirm the district court's order dismissing plaintiff's suit.

I

Pro se plaintiff, Anthony Ostric, brought the instant suit pursuant to 42 U.C.S. §§ 1981, 1983, 1985, 1986 and 1988, Title VII of the Civil Rights Act of 1964, §§ 703 and 704, 42 U.S.C. § 20002-2 and -3 and the First and Fourteenth Amendments to the United States Constitution. Plaintiff alleges that the defendants violated his civil rights and also alleges a breach of contract claim. The defendants are the Corporation of St. Mary's

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* Continued

the parties that it had tentatively concluded that oral argument would not be helpful to

(footnote continued on next page)

College; the Congregation of the Sisters of the Holy Cross; several administrative and faculty personnel at the College; the law firm, and two attorneys in the firm, that represented the college in litigation with the plaintiff; the Indiana Civil Rights Commission and its three Commissioners; the Attorney General, Theodore Sendak; a Deputy Attorney General; and Judge John Montgomery of the St. Joseph Circuit Court, South Bend, Indiana. The plaintiff alleges that the above defendants conspired and succeeded to deprive plaintiff of his constitutional rights by among other things, forcing him to retire from his faculty position and by participating in an effort to thwart all of plaintiff's attempts to vindicate his rights in the Indiana Civil Rights Commission and in the Indiana Circuit Court.

Plaintiff's complaint consisted of 74

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* Continued

the court in this case. The notice provides that any party might file a "Statement as to

(footnote continued on next page)

single-spaces legal size pages, containing 152 paragraphs. The complaint was filed along with a right to sue letter from the Equal Employment Opportunity Commission.

The case was referred to a United States Magistrate who recommended that the case be dismissed against the Indiana Judge, the Civil Rights Commissioners and against the Attorney General and his deputy because they were immune from suit. The Magistrate recommended that the suit against the Civil Rights Commission be dismissed based on the Eleventh Amendment.

The Magistrate also recommended that the

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* Continued

*"Need for Oral Argument." See Rule 34(a), Fed. R. App. p. (Effective Aug. 1, 1979); Circuit Rule 14(f). The plaintiff filed a "Statement as to need for Oral Argument." Upon consideration of defendants' motion and plaintiff's statement, we conclude that oral argument would not be helpful to the court in deciding this case.

plaintiff's case be dismissed as to §§ 1981, 1983, 1985, 1986 and 1988 claims, for failure to state a claim under these sections. The Magistrate finally recommended that the entire complaint be dismissed except that the plaintiff should be allowed to replead his claim under Title VII, 42 U.S.C. §§ 2000e-2 and -3, and his pendant state breach of contract claim. The district court judge adopted the Magistrate's recommendations and entered an appropriate order. The plaintiff was given sixty days to file an amended complaint.

The plaintiff appealed to this court three times during the pendancy of the litigation in the district court. All of the appeals were either dismissed or denied.1/ The plaintiff never amended his complaint and upon de-

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1/ Plaintiff applied for a writ of mandamus in an attempt to speed up the trial court's determination of his case in appeal No. 80-1541. That application was denied in an order dated December 16, 1980. Plaintiff appealed the Judge's order which dismissed the complaint and ordered him to replead in appeal No. 81-1538. That appeal was dismissed because there

(footnote continued on next page)

fendants' motion, the court dismissed plaintiff's claim on December 7, 1981, nine months after the Judge's order to amend the complaint was entered.

II

The Plaintiff appeals from the dismissal of his civil rights suit for failure to amend his pleadings. Plaintiff claims that the trial court erred in not holding that defendants' Motions to Dismiss were invalid; that the trial court erred in turning over the case to a United States Magistrate without plaintiff's consent; that the trial court erred in dismissing plaintiff's complaint and ordering him to submit an amended complaint; and that the trial court erred in dismissing this case for

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1/ Continued

was no final judgment in the district court. Plaintiff appealed the denial of a 60(b) motion in appeal No. 81-1675. That appeal was dismissed because the case was still pending in the district court.

failure to amend. Each of these purported errors will be discussed separately below.

A. Validity of Defendants' Motions to Dismiss

Plaintiff claims that he was entitled to a default judgment against all of the defendants for failure to file an answer within twenty days. Plaintiff filed a motion for default judgment on October 17, 1979 after the defendants had filed Rule 12 motions to dismiss on September 28, 1979 and on October 12, 1979. The judge refused to grant a default judgment because the entry of a default would have been a mere formality due to the existence of good cause to set aside. The good cause to set a default aside was the fact that Ostric's complaint failed to state a claim upon which relief could be granted except as to a few claims; therefore the plaintiff was not entitled to judgment. In addition, the judge refused to grant a default judgment because the defendants had already filed their motions to dismiss when plaintiff asked the court to

enter a default.

Whether a default should be entered or a default judgment should be set aside is a matter within the sound discretion of the trial judge. Duling v. Markun, 231 F.2d 833 (7th Cir. 1956). We cannot say the judge abused his discretion in refusing to enter a default judgment in this case and in allowing the defendants' motions to dismiss to stand.

B. Submission of the Case to a Magistrate

Plaintiff contends that the district court erred in referring the case to a United States Magistrate without his consent. The district court properly followed the procedure provided in 28 U.S.C. § 636(b)(1)(B). The Magistrate did not make a final decision on the motions to dismiss but merely made recommendations to the district court. The district court reviewed the thorough and well reasoned recommendations of the Magistrate, found them to be correct and adopted them as its own. There was no error in the procedure untilized by the

court. See United States v. Raddatz, 447 U.S. 667 (1980).

C. Dismissal of the Complaint with Leave to File an Amended Complaint

The plaintiff contends that the court erred in dismissing his complaint and ordering him to replead his claims under Title VII, 42 U.S.C. §§ 2000e-2 and -3 and his state breach of contract claim. We disagree. Each separate reason for dismissal will be discussed below.

(1) Immunity of the State Defendants

The Magistrate's report as adopted by the district court correctly found that the defendants represented by the State of Indiana were immune from suit. Judge Montgomery was absolutely immune from suit. Stump v. Sparkman, 435, U.S. 358 (1978). The Commissioners of the Indiana Civil Righs Commission, Defendants Shafer, Carvey and Maynard were not liable for damages for actions taken by them in their capacity as Commissioners under the

reasoning of Butz v. Economou, 438 U.S. 478, 514 (1978), which hold that officials performing adjudicatory functions are absolutely immune from suit in their official capacity. See also United States ex rel. Powell v. Irving, 684 F.2d 494 (7th Cir. 1982) (Parole Board members held to be absolutely immune from suit). The suit against the Indiana Civil Rights Commission correctly was held barred by the Eleventh Amendment. Quern v. Jordan, 440 U.S. 332 (1979). Finally, the district court properly held that the two members of the Attorney General's Office were immune from liability for their actions in defending the Indiana Civil Rights Commission against Ostric's suit in the Indiana Court. See Butz v. Economou, supra; Imbler v. Patchman 424 U.S. 409 (1976); Ellison v. Stephens, 581 F.2d 584 (6th Cir. 1978). The district court did not err when it dismissed Ostric's suit against the Indiana defendants because they were absolutely immune from suit.

(2) Dismissal of the § 1891 Claim

The district court also properly dismissed Ostric's claims under 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988 and the First, Fifth and Fourteenth Amendments. Section 1981 provides an action against private discrimination only on the basis of race. Jenkins v. Blue Cross Mutual Hospital Insurance, Inc., 522 F.2d 1235, 1240, n.8 (7th Cir. 1975), cert. denied, 429 U.S. 986 (1976). Ostric claims that he was the victim of discrimination based on his national origin and his religion. Section 1981 does not address this type of discrmination, therefore, Ostric failed to state a claim under Section 1981.

(3) Dismissal of the § 1983 Claim

To state a claim under section 1983, a plaintiff must allege that a consitutional right was violated under color of state law. Adickes v. S.H. Kress & Co., 398 U.S. 144, 150 (1970). The district court dismissed Ostric's claim under Section 1983 for failing

to demonstrate or allege sufficient state participation in the alleged conspiracy to deprive him of his rights. There are no state officials among the remaining defendants, St. Mary's College, the Congregation of the Holy Cross, the named faculty and other college personnel,and the law firm and lawyers representing those defendants before the Indiana Civil Rights Commission and the Indiana court. Although not a state official, a private person who acts jointly with a state official in a challenged action acts under "color of law" for purposes of section 1983. Dennis v. Sparks, 101 S.Ct. 183 (1980). The Supreme Court did state, however, that resorting to the courts and winning a law suit will not make a party a co-conspirator or a joint actor with the judge, id. at 186. Dennis v. Sparks, supra, involved a serious allegation of bribery of a judge.

Although Ostric alleges the existence of a conspiracy, his pleadings fail to support that allegation. In support of this allegation-

of conspiracy, Ostric claims that the Indiana Civil Rights Commission ruled against him by relying on obviously false affidavits and information. Ostric also alleges that Judge Montgomery dismissed his petition for review of the Indiana Civil Rights Commission decision pursuant to a motion made by the Indiana Attorney General. Ostric claims these actions were taken with the knowledge of the justice of his claim and based on information known to be false. The plaintiff does not allege that there was actual agreement between the parties, nor that he alleges serious misconduct such as was alleged in Dennis v. Sparks, supra. The plaintiff's allegations amount to no more than an expression of dissatisfaction because the state official defendants ruled against him. The plaintiff failed to allege sufficient facts from which the district court could infer state participation in a conspiracy.

In addition, the Magistrate's report notes that attorneys representing clients in state

court litigation do not act under color of state law and therefore cannot be held liable under Section 1983. Hansen v. Ahlgrimm, 520 F.2d 768 (7th Cir. (1975). The district court properly held that plaintiff failed to state a claim under Section 1983 because the remaining defendants, St. Mary's College, the Congregation of the Holy Cross, the named faculty members and other college personnel and the law firm and lawyers representing the college were not acting under color of state law.

(4) Dismissal of the § 1985 claim

An action under Section 1985 does not require that a defendant act under color of state law; therefore, conspiracies by private parties are actionable under Section 1985. Griffin v. Breckenridge, 403 U.S. 88 (1971). Although Section 1985 reaches private parties, state action may still be an essential element of a Section 1985 claim. State action is an element of a 1985 claim where the alleged deprivation

of a right is protected only from state action. Williams v. St. Joseph Hospital, 629 F.2d 488 (7th Cir. 1980). An allegation of denial of equal protection under the Fourteenth Amendment requires some allegations of state involvement in order to state a claim under Section 1985. Cohen v. Illinois Institute of Technology, 524 F.2d 818 (7th Cir. 1975), cert. denied, 425 U.S. 943 (1976). An allegation of deprivation of First Amendment rights, which have been incorporated into the Fourteenth Amendment, also requires an allegation of state action to state a claim under Section 1985. Murphy v. Mount Carmel High School, 543 F.2d 1189 (7th Cir. 1976). The Fifth Amendment would require the same claim of state action under Section 1985. See Public Utilities Commission v. Pollack, 343 U.S. 451 (1952).

St. Mary's is not a state institution nor did any of the alleged conspirators attempt to deprive Ostric of his right of recourse to any state agency or court. The necessary

element of state action is not present to state a claim under Section 1985 with regard to the specific rights that Ostric claims were violated.2/

(5) Dismissal of §§ 1986 and 1988 claims

To state a claim under Section 1986, a claim must be established under Section 1985. William v. St. Joseph Hospital, supra. Ostric failed to state a claim under Section 1985, therefore his Section 1986 claim must fail for the same resons.

Section 1988 does not create a distinct cause of action, but authorizes a federal court to resort to state and common law when

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2/ Ostric's claim that he was the object of retaliation because he criticized the administration and advocated for other professors in trouble may have stated a claim as a wrongful employment practice under 42 U.S.C. §§ 2000e-2 and -3 but did not state a claim under Section 1985. Section 1985 cannot be used to vindicate rights granted under Title VII. Great American Federal Savings & Loan Association v. Novotny, 442 U.S. 366 (1979).

necessary to vindicate civil rights where federal procedure is inadequate. Moor v. County of Alameda, 411 U.S. 693 (1973) overruled on other grounds, Monell v. Department Social Services, 436 U.S. 658 (1978). Therefore, the district court properly dismissed plaintiff's claim under Section 1986 and 1988 for failure to state a claim upon which relief could be granted.

(6) Title VII claim

The district court, upon the magistrate's recommendation, held that the plaintiff had fulfilled the requirements for filing suit under Title VII. Broadly construed, the complaint successfully pleaded a claim under Title VII, 42 U.S. §§ 2000e-2 and -3 and also successfully pleaded a pendant state claim for breach of contract. Once it has been determined that Ostric has successfully pleaded these claims, the issue is whether the district court appropriately ordered him to replead those claims so as to comply with Federal

Rules of Civil Procedure 8(a) and (e)(1) requiring a short plain statement of his claim.

(7) Dismissal of Complaint with Leave to File an Amended Complaint

Pro se Anthony Ostric filed a 74 page, single-spaced complaint, which is argumentative, conclusory, contains irrelevant comments and claims, and is so confusing that responsive pleading would be impossible. The defendants filed a motion to dismiss on that basis. The district court recognized that a pro se complaint should be read less stringently, but also ackonwledged that the fact a complaint is prepared by a pro se does not excuse that plaintiff from the requirements of the Federal Rules of Civil Procedure. In addition, dismissal of a complaint for failure to comply with Federal Rules of Civil Procedure 8(a) and (e)(1) is not favored. Tarkowski v. Robert Bartlett Realty Co., 644 F.2d 1204 (7th Cir. 1980); Littleton v. Berbling, 468 F.ed 389 (7th Cir. 1972), reversed on other grounds

sub nom.; O'Shea v. Littleton, 414 U.S. 488 (1974). The district court did not dismiss plaintiff's entire case but ordered the plaintiff to file an amended complaint in conformity with Federal Rules of Civil Procedure 8. This procedure conformed to action taken by other District Courts confronted with complaints which violate Rule 8. See, e.g., Hauer v. Bankers Trust New York Corporation, 425 F. Supp. 796 (E.D.Wis. 1977); Brainerd v. Potratz, 421 F. Supp. 836 (N.D.Ill. 1976), aff'd without opinion, 566 F.2d 1172 (7th Cir. 1977). See also Tarkowski v. Robert Bartlett Realty Co., supra. We cannot conclude that the district court erred in ordering the plaintiff to amend his complaint to comply with Federal Rules of Civil Procedure 8.

D. Dismissal of the Case for Failure to Amend

The question of whether to dismiss a complaint for failure to amend rests within the sound discretion of the district court.

The district court will not be reversed absent a showing of abuse of discretion. See Carl Locasio v. Teletype Corporation, No. 82-1354, slip op. (7th Cir. Dec. 2, 1982), Beshear v. Weinzapfel, 474 F.2d 127 (7th Cir. 1973). The plaintiff in this case was ordered to file an amended complaint within sixty days. The plaintiff never filed an amended complaint, but instead appealed the judge's order to this court, filed a motion for relief from judgment, and a motion for determination of plaintiff's entire case. In short, plaintiff did everything but file am amended complaint. Nine months after the court ordered the plaintiff to amend the complaint, the district court granted the defendants' motion to dismiss for failure to amend the complaint. We cannot conclude that the district court abused its discretion in dismissing plaintiff's case. Pavilonis v. King, 626 F.2d 1075 (1st Cir. 1980).

III

For the above reasons the district court

order dismissing plaintiff's case for failure to amend is affirmed.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

ANTHONY OSTRIC

Plaintiff,

vs.

THE CONGREGATION OF THE SISTERS OF THE HOLY CROSS, NOTRE DAME; WILLIAM A. HICKEY, RITA MARY CASSIDY DONALD M. HORNING, JOHN M. DUGGAN, JASON D. LINDOWER, MICHAEL R. MCKEE, SR. ROSE BERNARD TARLETON, THORNBURG, McGILL, DEAHL, HARMAN, CAREY AND MURRAY, FREDERICK F. THORNBURG, THOMAS L. MURRAY, INDIANA CIVIL RIGHTS COMMISSION, MARY W. SHAFER, J.L. MAYNARD, JOHN C. CARVEY, THEODORE L. SENDAK, CAROL ANN BOWMAN, AND JOHN W. MONTGOMERY,	)	Cause
Defendants.	)	No. S79-256

ORDER

This Court now takes up the Plaintiff's motion for Relief from Judgment filed December 31, 1981.

This Court, having carefully considered the record in this case, now DENIES said motion. SO ORDERED.

S/ ALLEN SHARP
JUDGE, UNITED STATES DISTRICT COURT

Entered this 6th day of January, 1982.

APPENDIX C

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

ANTHONY OSTRIC	)	
	)	
v	)	NO. S79-256
	)	
THE CORPORATION OF ST. MARY'S COLLEGE, et al.	)	

ORDER

On March 3, 1981 this Court ordered the Plaintiff to file an amended complaint limited to his allegations relying on 42 U.S.C. §2000(e)(2) and (3) and the state breach of contract claim within sixty days (60) from that date. Instead, the plaintiff filed two appeals to the Seventh Circuit Court of Appeals which were both dismissed. Plaintiff then filed a motion to reconsider this Court's original order, which this Court denied on November 24, 1981. Therefore, in light of plaintiff's failure to amend, the Court here-

by enters a final order of Dismissal.

Enter: December 7, 1981.

S/ ALLEN SHARP
JUDGE UNITED STATES DISTRICT COURT

APPENDIX D

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

ANTHONY OSTRIC,	)	
	)	
v.	)	NO. S79-256
	)	
THE CORPORATION OF ST. MARY'S COLLEGE NOTRE DAME, et al.	)	

ORDER

The plaintiff in this cause has moved "for determination of the plaintiff's entire case, to correct errors, and to overrule all of the Court's decision-denials-orders stated in its orders of March 3 and April 14, 1981." This motion raises the same issues previously ruled upon in this Court's order of April 14, 1981. Upon careful review of the motion and supporting memorandum, this Court finds insufficient grounds therein to reverse this Court's prior ruling. Therefore, plaintiff's motion in denied.

Plaintiff's memorandum also makes reference

to motions which have yet to be ruled upon. Any such motions are clearly moot and no further action thereon is warranted in this cause. SO ORDERED.

Enter: November 24, 1981.

S/ ALLEN SHARP
JUDGE UNITED STATES DISTRICT COURT

APPENDIX E

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

ANTHONY OSTRIC Plaintiff	:	
v.	:	No. S 79-256
THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME et al Defendants	:	

ORDER

This Court has carefully reviewed the Motion for Relief from Judgment (23 pages) filed April 8, 1981 in the context of the entire record of this case. The same is now DENIED.

Enter April 14, 1981.

S/ ALLEN SHARP
JUDGE, UNITED STATES DISTRICT COURT.

APPENDIX F

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

ANTHONY OSTRIC
Plaintiff

V. CIVIL No. S79-256

THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME, et al.
Defendants

MEMORANDUM AND ORDER

By order dated December 3, 1979, this cause was referred to the United States Magistrate for this District, the Honorable Gene B. Lee, for all necessary pre-trial procedures. Pursuant to that order, the Magistrate conducted a hearing on August 19, 1980, on pending motions to dismiss filed on behalf of the defendants. On January 27, 1981, the Magistrate filed with the Court its report and recommendations, copies of which were mailed to the plaintiff acting pro se and to counsel for the defendants.

As well as the Magistrate's report, this cause is before the Court on the plaintiff's motion for Default Judgment against the defendants Corporation of St. Mary's College, the Congregation of the Sisters of the Holy Cross, William A. Hickey, Rita Mary Cassidy Donald M. Horning, John M. Duggan, Jason D. Lindower and Michael McKee. The basis of the plaintiff's motion is that their Rule 12 motion to dismiss was untimely filed. The record shows that the motion was three days late. No entry of default was made because the motion had been on file nineteen days before the entry was requested.

An entry of default is a prerequisite to the grant of default judgment, therefore the plaintiff's motion shall be deemed a request that default be entered and judgment granted thereon.[1]

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[1] Further, this Court's ruling will embrace the untimely motion to dismiss filed on behalf

(footnote continued on next page)

See Fisher v. Taylor, 1 F.R.D. 448 (E.D. Tenn. 1940) and United States v. Jackson, 25 F. Supp. 79 (D. Ore. 1938) (Court has power to perform clerk's function of entering default).

The defendants are technically in violation of Rule 12(a) of the Federal Rules of Civil Procedure. Orange Theatre Corp. v. Rayherstz Amusement Corp., 130 F.2d 185 (3rd Cir. 1942). However, good cause for setting aside an entry of default is apparent on the face of the record in this cause. See United States ex rel. Dattola v. National Treasury Employees Union, 86 F.R.D. 496, 500 n. 11 (W.D. Pa. 1980). In such case the entry of default would be a mere formality. Brown v. Weschler, 135 F. Supp. 622, 624 (D. C.C. 1955). The defendants'

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[1] Continued

of the defendants Thornburg, McGill, Deahl, Harman, Carey and Murray, Frederick Thornburg and Thomas A. Murray, to which the plaintiff filed a "notice of objections," although no entry of default judgment was requested.

late filings are only technical violations of Rule 12(a) which cannot have prejudiced the plaintiff in view of his failure to act on the defaults until long after the tardy motions were on file. Further, any entry of default would certainly be set aside insofar as the complaint in this cause fails to state a claim upon which relief may be granted. Aldabe v. Aldabe, 616 F.2d 1089, 1092-93 (9th Cir. 1980); Orsinger v. Consolidated Flour Mills Co., 284 F. 224 (7th Cir.), cert. denied 260 U.S. 746, 43 S.Ct. 248, 67 L.Ed. 493 (1922); 6 Moores Federal Practice ¶55.02/3/, p.55-14 (1976).

The entry of default judgment is committed to the sound discretion of the Court. Duling v. Markum, 231 F.2d 833, 836 (7th Cir.), cert. denied 352 U.S. 870, 77 S.Ct. 96, 1 L.Ed.2d 76 (1956). The circumstances of this case do not warrant the harsh remedy of default judgment. Therefore the plaintiff's motion will be denied, and the defendants's motions will be deemed filed.

The plaintiff has objected to the Magistrate's report and recommendations with regard to the defendants' motions to dismiss on the grounds that the Magistrate has no authority to conduct the hearing or rule on the pending motions, which he argues are void because untimely. The plaintiff's objections are without merit. Title 28 of the United States Code, Section 636(b)(1)(B) (Supp. 1980) specifically authorizes the procedure followed in this cause. Further, the Magistrate has not ruled on the pending motions: that responsibility rests with this Court, which may accept, modify or reject the Magistrate's recommendations, in whole or in part. 28 U.S.C. §636(b)(1) (Supp. 1980). See Matthews v. Weber, 423 U.S. 251, 270-71, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). That the motions to dismiss were untimely does not render them void. The plaintiff's remedy is to apply for default, which this Court herein had denied.

With regard to the substance of the Magistrate's report, the Court has made an inde-

pendent review of the file and the proposed conclusions and recommendations submitted by the Magistrate. The Court finds that the Magistrate's proposed conclusions of law are correct in all respects and that the recommendations are appropriate. Therefore the Court now confirms and adopts the Magistrate's conclusions as those of the Court.

O R D E R

Accordingly, it is ordered that the Plaintiff, Anthony Ostric's, motion for entry of default and default judgment be DENIED; and that the motions to dismiss filed on behalf of the defendants be GRANTED except with regard to the plaintiff's claim based on Title VII of the Civil Rights Act of 1964, §§703 and 704, 42 U.S.C. §§2000e-2 and -3, and the State breach of contract claim. It is further ordered that the plaintiff file an amended complaint, limited to those claims and in conformity with Rule 8, within

60 days from this date.

SO ORDERED this 3 day of March, 1981.

S/ ALLEN SHARP
JUDGE, UNITED STATES DISTRICT COURT

APPENDIX G

INDIANA JUDICIAL NOMINATING COMMISSION

INDIANA COMMISSION ON JUDICIAL QUALIFICATIONS

September 17, 1979

Mr. Anthony Ostric
1114 Foster Avenue
South Bend, IN 46617

In re: Complaint against Judge John W. Montgomery

Dear Mr. Ostric:

Please be advised that the Indiana Commission on Juducial Qualifications has reviewed the complaint you forwarded concerning Judge Montgomery. At a meeting held on August 31, 1979, the Commission discussed this matter and concluded that your complaint did not raise an issue which warrants further consideration by the Commission.

In view of this decision, please be further advised that no further action will be taken by the Commission relative to your complaint.

Yours truly,

S/ RICHARD M. GIVAN
CHIEF JUSTICE OF INDIANA
CHAIRMAN

APPENDIX H

ST. JOSEPH CIRCUIT COURT
South Bend, Indiana 46601

Chambers of
John W. Montgomery
Judge

January 29, 1979

Anthony Ostric
1114 Foster Avenue
South Bend, Indiana 46617

Carol Ann Bowman
Deputy Attorney General
Room 219 State House
Indianapolis, Indiana 46204

Re: Cause No. K-2279*
Ostric vs. St. Mary's
College

Dear Mr. Ostric and Ms. Bowman:

The following entry was made this date in the captioned cause:

"This cause having been submitted on defendant's motion to dismiss and the amendments thereof petitioned for by the plaintiff not being germane to the issue raised by the defendant's motion to dismiss but nevertheless considered by the Court at the hearing on the motion to dismiss, the Court now being fully advised in the premises grants defendant's motion to dismiss. It

* Correct Cause No. K2297

is ordered that plaintiff's complaint for judicial review be and it hereby is dismissed."

Very truly yours,

S/ JOHN W. MONTGOMERY
JUDGE

APPENDIX I

THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana

STATE OF INDIANA	)	
	)	
COUNTY OF MARION	)	
	)	
ANTHONY OSTRIC,	)	
	)	
Complainant	)	
	)	
v.	)	DOCKET NO. EMre78020091
	)	EEOC NO. 053780977
ST. MARY'S COLLEGE,	)	
	)	
Respondent	)	

ORDER

On June 9, 1978, the Director, pursuant to Ind. Admin. R. and Reg. §(22-9-1-6)-13(C) /hereinafter cited as ICRC Rules, §(22-9-1-6)-__ /, entered a Finding of No Probable Cause-Lack of Jurisdiction and so notified Complainant.

The Director's notification advised Complainant of his right to make a written request for reconsideration of the Finding, as required by ICRC Rules, §(22-9-1-6)-13(D). Complainant timely filed that written request, which is in words and figures as follows:

A meeting was held on September 14, 1978 before the undersigned commissioner, who had been appointed by the Chairman to review and rule upon said request. Dr. Ostric was present. Having considered the arguments of the Complainant and the results of the investigation submitted by the Director, I hereby find and rule as follows:

1. St. Mary's College (hereinafter "St. Mary's") is the assumed name of Respondent, which is actually a corporation, The Corporation of St. Mary's College, Notre Dame. The corporation has filed Certificates of Assumed Name with the Secretary of State and the St. Joseph County Record.

2. According to Complainant's own written request, "we need these documents (Articles of Incorporation and By-Laws) because they will equally and explicitely (sic) show that St. Mary's College remained such Catholic institution owned and conducted by the same religious order from July 19, 1973 on and in particular in years: 1975, 1976, 1977 as well as after

March 13, 1978." (emphasis added.)

3. One of the purposes of St. Mary's, according to its Articles of Incorporation, is

> /t/o own and operate under the auspices of the Congregation of the Sisters of the Holy Cross, Notre Dame, Indiana, one or more institutions of higher learning to further the education of youth and adults, especially of women, without regard to race, creed, or national origin and to award degrees usual to such institutions.

4. "Institutions of higher learning" are "schools" and "educational institutions" as those terms are used in IC 22-9-1-3(h).

5. The Sisters of the Holy Cross, Notre Dame, Indiana and the Catholic church are both religious institutions.

6. St. Mary's is, under its Articles, affiliated with the Sisters of the Holy Cross, Notre Dame, Indiana.

7. According to Complainant's request for reconsideration, St. Mary's is a "Catholic institution owned and conducted by the same religious order."

8. St. Mary's is a "school, educational,

or charitable religious institution owned or conducted by, or affiliated with, a church or religious institution. . . ." as used in IC 22-9-1-3(h), excluding such entities from the definition of "employer."

9. In the absence of an "employer," the Indiana Civil Rights Commission, lacks jurisdiction over a claim of discrimination in employment.

IS, THEREFORE, ORDERED

1. The Director's Finding should be, and the same hereby is, affirmed.

S/ MARY W. SHAFER
COMMISSIONER

Dated: 10-3-78

APPENDIX J

STATE OF INDIANA

CIVIL RIGHTS COMMISSION

June 12, 1978

Anthony Ostric
1114 Foster Avenue
South Bend, IN 46617

IN REPLY TO:
DOCKET NO. EMre78020091

The Director of the Indiana Civil Rights Commission finds that because the Commssion has no jurisdiction over this matter there is no probable cause to believe that a violation of the Indiana Civil Rights Law has occured as charged in the complaint referred to above. A copy of the finding is enclosed herein. This decision may be appealed within fifteen (15) days upon receipt of this letter. A timely appeal must be submitted in writing to the Comission office and objections must be stated as specifically as possible.

Sincerely,

S/ J.L. MAYNARD
DIRECTOR

APPENDIX K

THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana

STATE OF INDIANA)
)
COUNTY OF MARION)

Anthony Ostric
1114 Foster Avenue
South Bend, IN 46617

Complainant

v. Docket No. EMre78020091

St. Mary's College
Notre Dame
Indiana 46556

Respondent

FINDING

I. SUMMARY OF COMPLAINANT'S ALLEGATIONS:

Complainant, a Catholic Male Croatian*, charges religion and national origin discrimination in employment in that his request

* Instead of "Croatian," it should be stated correctly: "Complainant is a citizen of the United States, native of Croatia when the latter was a part of the Austro-Hungarian Empire." This correction was made by the Complainant of the above entitled cause.

for exemption from retirement was denied on December 9, 1977. Also, on December 12, 1977 a request for a "properly earned and absolutely indispensable leave"* was denied.

II. SUMMARY OF RESPONSE:

Respondent denies Complainant's charge of discrimination in employment and contends that the Commission has no jurisdiction over Respondent as an "employer", as the term is defined in IC 22-9-1-3(h).

III. SUMMARY OF EVIDENCE:

1. The term "employer" in the Indiana Civil Rights Law,"... does not include any... school, educational or charitable religious institution owned or conducted by, or affiliated with, a church or religious institution..."

2. Respondent submitted an affidavit with named affiants: William A. Hickey, Vice President and Dean of Faculty of the Corporation of Saint Mary's College; and Jason D. Lindower,

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* Instead of "leave," it should be stated correctly: "sabbatical leave." This correction is made also by the Complainant of the above entitled cause.

Jr. Controller of the Corporation of Saint Mary's College, Notre Dame.

Respondent's affidavit and attached certificates of names establishes that: St. Mary's College, Notre Dame is recognized by the Internal Revenue Service as a "tax exempt religious, educational, charitable organization undrr Section 501(c)(3) of the Internal Revenue Code and is not deemed to be a private foundation under Section 509(a) of the Internal Revenue Code."

IV. FINDING

No Probable Cause - Lack of Jurisdiction

Date 6-9-78 S/ J.L. MAYNARD
DIRECTOR

APPENDIX L

Unpublished Per Curiam Order

JUDGMENT - WITHOUT ORAL ARGUMENT

UNITED STATES COURT OF APPEAL

For the Seventh Circuit

March 1, 1983

Before

Hon. WALTER J. CUMMINGS, Chief Judge

Hon. WILLAIM J. BAUER, Circuit Judge .

Hon. JOHN L. COFFEY, Circuit Judge

ANTHONY OSTRIC Plaintiff-Appellant, No. 82-1031 vs. THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME, et al., Defendants-Appellees.	Appeal from the United States District Court for the Northern District of Indiana, South Bend Division No. 79 C 256 Judge Allen Sharp

This cause came before the Court for decision on the record from the United States District Court for the Northern District of Indiana, South Bend Division.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of said District Court in this cause appealed

from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court entered this date.

APPENDIX M

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

March 28, 1983

Before

Hon. WALTER J. CUMMINGS, Chief Judge

Hon. WILLIAM J. BAUER, Circuit Judge

Hon. JOHN L. COFFEY, Circuit Judge

ANTHONY OSTRIC, Plaintiff-Appellant,	)	Appeal from the United States District Court for the Northern District of Indiana, South Bend Division. No. 79 C 256 Allen Sharp, Judge.
No. 82-1031 vs.	)	
THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME, et al., Defendants-Appellees.	)	

ORDER

On consideration of the petition for rehearing and suggestion for rehearing en banc filed in the above-entitled cause by Plaintiff-Appellant Anthony Ostric, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

It is ordered that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

APPENDIX N

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

March 23, 1983

Before

Hon. WILLIAM J. BAUER, Circuit Judge

ANTHONY OSTRIC, Plaintiff-Appellant,	) Appeal from the United States District Court for the Northern District of Indiana, South Bend Division No. 79 C 256 Judge Allen Sharp
No. 82-1031 vs.	
THE CORPORATION OF ST. MARY·S COLLEGE, NOTRE DAME, et al., Defendants-Appellees.	

This matter comes before the Court for its consideration upon the following documents:

1. The "MOTION TO STAY OF THE MANDATE" filed herein on March 10, 1983 by pro se plaintiff-appellant, Anthony Ostric.

2. The "MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REHEARING" filed herein on March 10, 1983, by pro se plaintiff- appellant, Anthony Ostric.

On consideration thereof,

IT IS ORDERED that said motions are hereby DENIED.

APPENDIX O

Judgment On The Decision By The Court

UNITED STATES DISTRICT COURT

For The

NORTHERN DISTRICT OF INDIANA

Civil Action File No. S79-256

ANTHONY OSTRIC

vs.

THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME, THE CONGREGATION OF THE SISTERS OF THE HOLY CROSS, NOTRE DAME, WILLIAM A. HICKEY, RITA MARY CASSIDY, DONALD M. HORNING, JOHN M. DUGGAN, JASON D. LINDOWER, MICHAEL R. MCKEE, SR. ROSE BERNARD TARLETON, THORNBURG, MCGILL, DEAHL, HARMAN, CAREY & MURRAY, FREDERICK F. THORNBURG, THOMAS L. MURRAY, INDIANA CIVIL RIGHTS COMMISSION, MARY W. SHAFER, J.L. MAYNARD, JOHN C. CARVEY, THEODORE L. SENDAK CAROL ANN BOWMAN, JOHN W. MONTGOMERY

JUDGMENT

This action came for (hearing) before the Court, Honorable ALLEN SHARP, United States District Judge, presiding, and the issues having be duly (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that Plaintiff

take nothing by his complaint and this case is dismissed.

Dated at SOUTH BEND, INDIANA, this 7th day of December, 1981

RICHARD E. TIMMONS
CLERK OF COURT

S/ TERESE M. HINKLE
DEPUTY CLERK

APPENDIX P

CIVIL DOCKET, ST. JOSEPH Circuit Court*

Filed 10-23-78 Set for Disposed of No. K-2297 Attorneys	Parties	Service	Kind Of Action
PRO SE	ANTHONY OSTRIC		PETITION FOR JUDICIAL REVIEW
Carol Ann Bowman, DAG	VS		OF THE FINAL ORDER (FINDING)
	ST. MARY'S COLLEGE		OF INDIANA CIVIL RIGHTS COMMISSION AND PLAINTIFF'S COMPLAINT

DATE

11-3-78 Pltff files petition for extension of time within which to file transcript of proceedings. Petition granted. Pltff is given to and including Dec. 22, 1978 within which to file transcript of proceedings.

11-20-78 Indiana Civil Rights Commission appears by Theodore L. Sendak, Attorney of Indiana and Carol Ann Bowman, Dep.

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* The Petitioner obtained this copy of the folio of the Civil Docket from this Court on January 30, 1979. This folio was significantly modified by this Court after its ruling of April 26, 1979. (About this ruling, see Appendix Q, p.62a; regarding this modification, compare this Appendix with Appendix Q, p. 58a et seq.)

Atty General and files motion to dismiss. Hearing is set for Dec. 28, 1978 at 1:30 p.m. Notice ordered issued.

11-22-78 On motion of pltff hearing on motion to dismiss is set for 12-28-78, 1:30 p.m. Notice ordered issued.

DON G. BLACKMOND, JUDGE PRO TEM

12-4-78 Pltff files second praecipe to prepare transcript of proceedings for judicial review.

(sic)

11-27-78 Pltff files praecipe to prepare transcript for judicial review.

ROGER F. GAY, JUDGE PRO TEM

12-8-78 Pltff files petition for leave of Court for (1) second amendment of petition for judicial review and (2) second amendment of the petition for judicial review of the final order (finding) of the ICRC and complainant's complaint.

DOUGLAS D. SEELY, JR., JUDGE PRO TEM

12-11-78 Pltff files brief in opposition to

motion to dismiss.

THOMAS BODNAR, JUDGE PRO TEM

12-12-78 Pltff pro se files ICRC transcript of the proceedings ("under its Docket EMre 78020091...").

12-28-78 Deft appears by Carol Ann Bowman, Deputy Attorney General. Pltff appears in his own proper person. Hearing had on deft's motion to dismiss. Ruling reserved.

1-29-79 This cause having been submitted on Defendant's motion to dismiss and the amendments thereof petitioned for by the plaintiff not being germane to the issue raised by the defendants motion to dismiss but nevertheless considered by the Court at the hearing on the motion to dismiss, the Court now being fully advised in the premises grants defendant's motion to dismiss. It is ordered that plaintiff's complaint for judicial review be and hereby is dismissed. JUDGMENT.

APPENDIX Q

CIVIL DOCKET, ST. JOSEPH Circuit Court*

Filed 10-23-78 Attorneys	Set for Parties	Disposed of Service	No. K-2297 Kind Of Action
PRO SE	ANTHONY OSTRIC		PETITION FOR JUDICIAL REVIEW OF THE FINAL ORDER (FINDING) OF INDIANA CIVIL RIGHTS COMMISSION AND PLAINTIFF'S COMPLAINT
Carol Ann Bowman, DAG	VS		
	ST. MARY'S COLLEGE		

DATE	
10-30-78	Pltff files amendment of the petition for judicial review of the final order of the Indiana Civil Rights Commission and complainant's complaint.**
11-3-78	Pltff files petition for extension of time within which to file transcript of proceedings. Petition granted.

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* The Petitioner obtained from this Court this copy of the folio of its Civil Docket, with several significant changes introduced by the Court after its ruling of April 26, 1979 (NR. 1, §§ 144.-145., pp. 61-62; regarding this modification, compare this Appendix with Appendix P, p. 55a et seq.)

** The Complainant's Amendment to the Petition for Judicial Review here indicated had not been entered in the original folio of this Docket.

Pltff is given to and including Dec. 22, 1978 within which to file transcript of proceedings.

11-20-78 Indiana Civil Rights Commission appears by Theodore L. Sendak, Attorney of Indiana, and Carol Ann Bowman, Dep. Attorney of Indiana and files motion to dismiss. Hearing is set for Dec. 28, 1978 at 1:30 p.m. Notice ordered issued.

11-22-78 On motion of pltff hearing on motion to dismiss is set for 12-28-78, at 1:30 p.m. Notice ordered issued.

DON G. BLACKMOND, JUDGE PRO TEM

12-4-78 Pltff files second praecipe to prepare transcript of proceedings for judicial review. (sic)

11-27-78 Pltff files praecipe to prepare transcript for judicial review.

ROGER F. GAY, JUDGE PRO TEM

12-8-78 Pltff files petition for leave of Court for (1) second amendment of petition for judicial review and

(2) second amendment of the petition for judicial review of the final order (finding) of the ICRC and complainant's complaint.

DOUGLAS D. SEELY, JR., JUDGE PRO TEM

12-11-78 Pltff files brief in opposition to motion to dismiss.

THOMAS BODNAR, JUDGE PRO TEM

12-12-78 Pltff pro se files ICRC transcript of the proceedings ("under its Docket EMre 78020091...")

12-28-78 Deft appears by Carol Ann Bowman, Deputy Attorney General. Pltff appears in his own proper person. Hearing had on deft's motion to dismiss. Ruling reserved.

********** See Over +

1-29-79 This cause having been submitted on Defendant's motion to dismiss and the amendments thereof petitioned for by plaintiff not being germane to the issue

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+ This insertion and all entries referred to by: "See Over" were made only after this Court ruling of April 26, 1976.
(See Appendix Q , p. 62a)

raised by the defendant's motion to dismiss but nevertheless considered by the Court at the hearing on the motion to dismiss, the Court being fully advised in the premises grants defendant's motion to dismiss. It is ordered that plaintiff's complaint for judicial review be and hereby is dismissed. JUDGMENT.

/The following represents the text of the folio of the Docket referred to by the remark "See Over"; it was added after said Court's ruling of April 26, 1976./

DATE MINUTES OF THE COURT

1-22-79 Plaintiff files motion for order compelling transmission of the complete transcript of proceedings.

1-26-79 Deft. Indiana Civil Rights Commission files its response to complainant's motion for order compelling transmission of the complete transcript of proceedings.

1-29-79 (see over)

3-19-79 Comes now Anthony Ostric, pro se, Complainant herein, files motion for relief from order together with memorandum of law in support thereof.

3-30-79 Comes now Thomas L. Murray and files special appearance for St. Mary's College and motion to overrule complainant's motion of March 19, 1979.

4-9-79 Comes now complainant Anthony Ostric and files response to respondent's special appearance by one of its legal representatives and its motion to overrule complainant's motion.

4-26-79 Defendant's motion to overrule complainant's motion for relief from order filed by complainant on March 19, 1979 is granted. Anthony Ostric's pro se motion for relief from order is overruled.

APPENDIX R

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

March 31, 1982

By the Court:

ANTHONY OSTRIC Plaintiff-Appellant, No. 82-1031 vs. THE CORPORATION OF ST. MARY'S COLLEGE NOTRE DAME, et al., Defendants-Appellees.	)	Appeal from the United States District Court for the Northern District of Indiana, South Bend Division. No. 79-C-256 Hon. Allen Sharp, Judge

NOTICE

It has been suggested that oral argument may not be helpful in deciding this case. If there is no oral argument, a panel of three judges will decide this case on the basis of the briefs and record. Within fourteen (14) days of the date of this Notice any party to this appeal may file a "STATEMENT AS TO NEED FOR ORAL ARGUMENT," suggesting reason why oral argument may be necessary for proper

resolution of the issue presented. An original and three (3) copies of your statement must be filed with the Clerk of this Court, together with proof of service on opposing counsel. Such statement will be considered, but oral argument may or may not be granted. See Rule 34 of the Federal Rules of Appellate Procedure and Rule 14(f) of the Circuit Rules of the Seventh Circuit.

If the court decides that oral argument would not be helpful, the next document you will receive regarding this matter will be the final decision. That decision will be reached by a panel of three (3) judges after submission of the record and briefs already filed herein. On the other hand, if the court decides that oral argument would be helpful, the next document you will receive concerning this matter will be a "Notice of Oral Argument". Such notices are sent out approximately four (4) weeks in advance of the date scheduled for oral argument.

APPENDIX S

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

ANTHONY OSTRIC Plaintiff v. THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME; et al	:	No. S 79-256

ORDER

The within case is now submitted to the Honorable Gene B. Lee, United States Magistrate, for all necessary pretrial procedures and the formulation of a full and complete pretrial order.

Said United States Magistrate shall make all rulings and findings that are within the authority of his office.

Enter 12/3/79

S/ ALLEN SHARP
JUDGE, UNITED STATES DISTRICT COURT

APPENDIX T

THE UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

TO: ANTHONY OSTRIC, ARTHUR MAY, R.KENT ROWE, ROBERT F. COLKER

RE: ANTHONY OSTRIC v. THE CORPORATION OF ST. MARY'S COLLEGE et al S79-256

NOTICE

Pursuant to the Federal Magistrate Act of 1979, you are hereby notified that you have the right to consent to have a full-time United States Magistrate conduct any or all proceedings in a jury or nonjury civil matter, including trial, and order the entry of judgment.

You are further notified that upon entry of judgment by the Magistrate, an aggrieved party may appeal directly to the appropriate United States Court of Appeals from the judgment of the Magistrate in the same manner

as an appeal from any other judgment of a district court. Provided, however, in accordance with the Act, that at the time of reference to the Magistrate, the parties may further consent to appeal on the record to a Judge of the district court, in the same manner as an appeal from the judgment of a district court to a court of appeals, in lieu of the direct appeal to the appropriate United States Court of Appeals.

The enclosed form labeled "Consent" (Refusal To Consent) provides appropriate space for either consenting or refusing to consent and must be signed and returned to the clerk's office in South Bend within twenty (20) days from the date of this notice.

Dated this 18 day of January, 1980.

RICHARD E. TIMMONS, CLERK

By: S/ STEPHEN R. LUDWIG
DEPUTY CLERK

APPENDIX U

THE UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

CIVIL NO. S79-0256

REFUSAL TO CONSENT

In the event you are unwilling to consent, please sign the line below and return directly to the clerk within the 20-day period prescribed in the attached notice.

Date: January 21, 1980.

S/ ANTHONY OSTRIC
PRO SE

APPENDIX V

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

ANTHONY OSTRIC

V. CIVIL NO. S 79-256

THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME: ET AL

NOTICE OF HEARING

The hearings on defendants' separate and several Motions to Dismiss are now fixed for August 19, 1980 at 1:30 o'clock P.M.

Enter: August 5, 1980.

S/ GENE B. LEE
UNITED STATES MAGISTRATE

APPENDIX W

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

ANTHONY OSTRIC
Plaintiff

V.

CIVIL NO. S79-256

THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME; et al.

Dated: January 27, 1981

/EXCERPT FROM THE/

REPORT OF UNITED STATES MAGISTRATE

IN RESPONSE TO ORDER DATED DECEMBER 3, 1979

On December 3, 1979, the District Court entered an order referring this case to the undersigned United States Magistrate for all necessary pretrial procedures and the formulation of a full and complete pretrial order pursuant to §636(b) of the Federal Magistrates Act of 1968, as amended, and this report is submitted and filed with the court in conformity with §636(c) of said act.

The plaintiff, Anthony Ostric, brought this suit on the basis of 42 U.S.C. §§1981, 1983, 1985, 1986 and 1988, Title VII of the Civil Rights Act of 1964, §§703, and 704, 42 U,C.S. §§2000e-2 and -3, and the first, fifth and fourteenth amendments to the United States Constitution. This cause is before the Court upon motions to dismiss filed on behalf of the defendants, Indiana Civil Rights Commission, Mary W. Shafer, J.L. Maynard, John C. Carvey, Theodore L. Sendak, Carol Ann Bowman, Judge Montgomery, Frederick F. Thornburg, Thomas L. Murray, the law firm Thornburg, McGill, Deahl, Harman, Carey, and Murray, Corporation of St. Mary's College, Congregation of Holy Cross, William Hickey, Rita Mary Cassidy, Donald Horning, John Duggan, Jason Lindower, Michael McKee, and Sister Rose Bernard Carlton /sic/.

A hearing was held on the motions to dismiss on August 19, 1981. (Emphasis added.)

. . . . . .

APPENDIX X

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

ANTHONY OSTRIC Plaintiff	:	
v.	:	No. S 79-256
THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME, et al Defendants	:	

ORDER

On the 27th day of January 1981, the Honorable Gene B. Lee, United States Magistrate, submitted his report in response to this Court's order of December 3, 1979. The plaintiff, Anthony Ostric, is now given until February 17, 1981 to file full written objections thereto. A copy of this order shall be mailed to the plaintiff forthwith.

Enter January 30, 1981.

S/ ALLEN SHARP
JUDGE, UNITED STATES DISTRICT COURT.

APPENDIX Y

No. A - 945

IN THE SUPREME COURT OF THE UNITED STATES

TERM, 1983

ANTHONY OSTRIC,

Plaintiff-Appellant,

- AGAINST -

THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME, ET AL.,

Defendants-Appellees.

ON APPEAL FROM JUDGMENT
OF THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Cause No. 82-1031

APPLICATION FOR EXTENSION OF TIME

TO FILE A PETITION FOR CERTIORARY *

V. The Petitioner . . . brought this civil case (to be tried by jury) before the United States District Court for the Northern District of Indiana, South Bend Division. The Petitioner commenced his action (File No. S79-256) by

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* Excerpts : Part V. /Statement/, pp. 2-5

filing, On August 31, 1979, his Complaint against the Corporation of St. Mary's College, Notre Dame et al. . . . . The Petitioner's said Complaint was made in accordance with the Federal Rules of Civil Procedure, and in particular Rule 8(a); it contains (§ 1, p. 1) "(1) a short and plain statement of the grounds upon which the court's jurisdiction depends," within the meaning of this rule:

> 2. Jurisdiction is conferred to . . . /the Trial/ Court by Title 28 of the United States Code, Section 1331; it is founded on the existence of a Federal question and amount of controversy. The matter in controversy exceeds, exclusive of interst and cost, the sum of ten thousand dollars.

Said Complaint contains also (§§ 1, 3-12, pp. 1-3). "(2) a short and plain statement of the claim showing that the pleader is entitled to relief," within the meaning of said Rule 8(a), supra. First, under the title, "I. Preliminary Statement," of his Complaint, the Petitioner asserted (§ 1.) that

> his constitutional and other rights and and privileges guaranteed by the United States Constitution and other laws and legal provisions deriving form it . . . . were denied, abridged,

violated . . . by Defendants The Corporation of St. Mary's College, Notre Dame (hereinafter "St. Mary's College") and other Defendants . . . . (by commission and omission) . . ..

Then, under the title "III. Statement of the Claim," the Petitioner asserted that

> 3. For a long period of time (since Fall of 1967), . . . /Petitioner's/ employer, St. Mary's College, and the following Defendants: The Congregation of the Sisters of the Holy Cross, Notre Dame (hereinafter "The Sisters of the Holy Cross"), William A. Hickey, Donald M. Horning, and Rita Mary Cassidy engaged in numerous and various improper, unfair, unethical, inequitable and unlawful (conspiratorial) actions (by commission and/or omission) against . . . /Petitioner/ to accomplish an unlawful purpose: deprivation and/or denial of . . . /Petitioner's/ equal rights (privileges) and opportunities, and his dismissal or forced resignation, and most recently (June, 1978), forced retirement.
>
> 4. Some of the Defendants (namely John M. Duggan, Jason D. Lindower, Michael R. McKee, Rose Bernard Tarleton, Thornburg McGill Deahl Harman Carey and Murray, Attorneys at Law (hereinafter "Thornburg legal firm"), Frederick F. Thornburg and Thomas C. Murray later joined the above mentioned group of Defendants (after July, 1975) by engaging themselves also in similar improper, unethical, inequitable and unlawful (conspiratorial) actions (by commission and/or omission) against . . . /Petitioner/ for the same negative purpose.

5. After February 1978, the remaining Defendants (namely the Indiana Civil Rights Commission (hereinafter "ICRC"), Mary W. Shafer, Commissioner on the ICRC. J.L. Maynard, Director of the ICRC, John C. Carvey, Chairperson of the ICRC, Theodore L. Sendak, Attorney General of Indiana, Carol Ann Bowman, Deputy Attorney General and John W. Montgomery, Judge of St. Joseph Circuit Court, South Bend, Indiana) . . . joined the other Defendants (mentioned above) in their inequitable and unlawful activities, forming with them powerful conspiratorial connections against . . . /Petitioner/. In doing so, they frustrated all . . . /Petitioner's/ efforts in seeking justice and relief in this matter /emphasis added/.

6. The following are the Articles of, and Amendments to the Constitution of the United States, Federal Acts, Titles of the United States Code and other laws and regulations securing, defending, and protecting United States citizen's constitutional and other civil rights which were denied, abridged, violated . . . to the ... /Petitioner/ by said Defendants:

(a) The 1st Amendment to the Constition of the United States - Freedom of Speech, Press and Religion;
(b) The 14th Amendment to the Constitution of the United States, Section 1 - Rights of Citizens of the United States;
(c) The Civil Rights Act of 1964;
(d) The Equal Employment Opportunity Act of 1972 - Title VII - Equal Employment Opportunity Sections 703 and 704;
(e) United States Code, Title 42, § 1981. - Equal Rights under the

Laws, § 1983. - Civil action for deprivation of rights § 1985. - Conspiracy to interfere with Civil Rights, § 1986. - Same, action for neglect to prevent, § 1988. - Proceeding in Vindication of Civil Rights;
(f) The 5th Amendment to the Constitution of the United States - Due Process of Law;
(g) Breach of Contract (Contractual Agreements) and noncompliance with St. Mary's College By-Laws, Rules and Regulations (College Governance)
(h) Noncompliance with (various) Laws and Regulations of the State of Indiana.

There are multiple causes of action in this case; they are presented in the Petitioner's Complaint (§§ 7-12, pp. 2-3) under the Title: "Causes of Action"; the latter are constituted of an ample set of facts (§§ 13-152, pp. 3-10) thoroughly documented, in support of his "claim upon which relief can be granted," within the meaning of F.R.C.P., Rule 12(b)(6); it is stated:

> 7. . . . /A/ctions of <u>discrimination</u> /emphasis added/ against... /the Petitioner/ taken by the Defendants . . ./named above, §§ 3.-4./ to cause deprivation and/or denial of ... /his/ equal rights and opportunities, and finally, to cause his dismissal or forced resignation and forced retirement because of ... /Petitoner's/ cultural and world view and its guiding principles (values)

and actions deriving from it - based mainly on ... /his/ . . . religion (and beliefs ... and ... personal and cultural (ethnical) values). Such actions against ... /Petitioner/ are unlawful, violating ... /his/ civil rights, in particular his freedom of speech and religion guaranteed by the 1st and 14th Amendments to the Constitution, as well as (Title VII of) the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972 /Sections 703 and 704, 42 U.S.C. §§ 2000e-2 and -3/; such actions also go against ... /Petitioner's/ Academic Freedom guaranteed by By-Laws of ... (St. Mary's)College . . ..

. . . .

8. . . . /A/ctions of discrimination and retaliation taken by said Defendants (. . .) against ... /Petitioner/ to cause /the same/ deprivation and or /denial of his/ rights and opportunities and . . . /to attain the same negative goal /described in § 7/ against the Petitioner/ because . . ., on several occasions, ... /he/ made a charge . . ., filed complaints . . ., and acted as a witness against St. Mary's College and ... members of St. Mary's College Community; /the/ Defendants /named above, §§ 3.-4./ retaliated against ... /the Petitioner/ . . ..

. . . .

9. . . . .

. . . .

10. . . . /The/ illegal actions of breach of contract, contractual and other agreements between ... /the Petitioner/ and St. Mary's College by the latter and other Defendants governing Officers of St. Mary's College /named in § 3./ consistut/ing/ . . . /a separate/ cause of action because of the inviolability of contracts guaranteed by the Constitution and other laws

of the United States.

. . . .

11. . . . /A/rbitrary, illegal actions taken by Defendants against ... /the Petitioner/, such as deprivation of ... /his/ regular salary, denial of /his/ sabbatical leave, denial of exemption from retirement at age 65, and not answering his application for a new opening /position/ because of ... /the Petitioner's/ reaching age 65, represent clear violation of Due Process of Law guaranteed to the ... /Petitioner/ by the 5th and 14th Amendments to the Constitution of the United States . . ..

. . . .

12. . . . /T/hese (illegal) actions ... /including/ clear instances of misconduct, false presentation, libel and perjury ... /in form of a/ conspiracy . . . . were taken by Defendants against /the Petitioner/ (since February 1967); at the beginning, the conspiracy was made in the name of Defendants St. Mary's College by the Defendants administrative officers (President(s), Vice president(s) and Dean(s) of the Faculty of said College /under 42 U.S.C. §§ 1985, 1986/; the other Defendants later became parties to ... /the/ conspiratorial combination /under 42 U.S.C. §§ 1985, 1986 and/or under 42 U.S.C. § 1983/. Although ... Defendants /conspirators engaged in different illegal activities at different periods of time and in their respectively different roles, in furtherance of the object of their conspiracy by acts and/or omission or by wrongful neglect, they collectively injured ... /the Petitioner/ in his person and property and deprived him of . . . his previously mentioned rights and privileges as a citizen of the United States.

APPENDIX Z

UNITED STATES DISTRICT COURT

For The

NORTHERN DISTRICT OF INDIANA

South Bend Division

ANTHONY OSTRIC, Plaintiff,	)	
v.	)	Civil Action No. S79-0256
THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME, et al., Defendants.	)	Filed: August 31, 1979

COMPLAINT

/The following are excerpts showing how and why/ the . . . Defendants . . . /in the above entitled cause/ engaged in numerous . . . improper, unfair . . . and unlawful actions . . . (/through/ conspiratorial connections, under 42 U.S.C. §§ 1983, 1985 and 1986) against Plaintiff to accomplish an unlawful purpose: . . . his dismissal or

forced resignation, and most recently (June 1978), forced retirement. /SS 3.-5., p. 1/

. . . .

. . . .

Statement of the Facts in Support of the Claim and Constituting Causes of Action

19. An important fact relevant to the issues presented for review ... is related to the Plaintiff's performance as faculty of St. Mary's College . . .. According to the Dean of Graduate Education:

> "his performance has been (declared as) excellent. . . . No Professor has been more cooperative or conscientious . . . ."
> "His outstanding qualities of teaching and scholarship were and are continously recognized ... (by) his students, his colleagues and his superiors . . .."

20. On February 11, 1966, . . . Plaintiff was promoted to the rank of Full Professor. /SS 19.-20., p. 5/

. . . .

. . . .

23. On July 25, 1967, following a recommendation from . . . (the) Academic Dean of St. Mary's, . . . (the) President of this College...

asked Plaintiff to accept the function of the fully accredited regular chairman of the Sociology Department, with an explicit stipulation that the Plaintiff put this Department in order, and that he organize it and its curriculum, according to his best professional knowledge, ability and judgment.

24. After ... (his) appointment by ... (this)College . . . 1965, and election by the Faculty Assembly /of the same College/ (1965) as one of the members of ... /this College's/ Curriculum Committee (later Plaintiff ... /became/ a member of the Academic Standard Committee, and, during recent years, of Faculty Affairs Committee . . .), Plaintiff tried as well as he could to perform his professional role and duties as member of these Committees (as well as other roles and duties as man, Christian and citizen of the United States).

25. In 1965 and 1966, Plaintiff was asked officially, . . . to express his view on the nature of the College . . .- what (it) should be . . . and the Plaintiff did respond on several occasions orally as part of a panel,

in Committee, Faculty, or during public conferences at St. Mary's College. Plaintiff pointed to many cases of negligence, . . . improprieties and unlawfulness conducted by College Administrators, ... Plaintiff did also in writing as dictated by his conscience and love of truth. /§§ 23.-25., p. 6/

. . . .

. . . .

28. By expressing his views such as those presented . . . /concretely described in the Complaint, paragraphs 25-27/, Plaintiff stepped on the toes of many members of St. Mary's College community and, in doing so, definitely "alienated" many of its most powerful members . . . including Defendant Rita Mary Cassidy, resulting in their unyielding lasting hostility and their nonacceptance of Plaintiff in the said College community . . . ..

29. After . . . /that/, said powerful members of . . . /said/ community started to work hard in attempts to provoke Plaintiff and set traps for him; the origin of their conpiracy began then; since that time, they

initiated their unlawful actions of discrimination against Plaintiff to cause his dismissal, or forced resignation, to rid themselves of him.

30. The facts as those presented above (§§ 25-27 (of the Complaint)) - together with those whose presentation will follow here immediately (in §§ 31-36 /of the Complaint/) represent an inception, or a point of ultimate beginning whence all difficulties at St. Mary's emanated, or a source of all kinds of illegal actions (from discrimination, to perjury and conspiracy) taken by the Defendants against Plaintiff . . .. /§§ 28.-30., p. 9/

. . . .

32. Plaintiff was always ready and trying to help, serving as witness and defender of those members of the Faculty or Administration who were victims of any kind of negligence, mistreatment, false accusations and forced "resignation" or unjustified dismissal . . . By acting in this way, Plaintiff "provoked", and further definitely "alienated" said powerful members of the College community . . . ..(p. 10)

. . . . .

. . . . .

36. After Sister Mary Grace's (Kos) /improper/ dismissal, real chaos with normlessness, arbitrariness, disregard for due process and an atmosphere of terror ensued at St. Mary's College. Because of this, Plaintiff, as well as some other faculty members, expressed their indignation and formulated a protest against what was happening at St. Mary's College and particularly the mistreatment of Sister Mary Grace. They made it known to Mother M. Olivette Whalen (Superior General of Sisters of the Holy Cross /the latter religious Congregation is one of the Defendants in the Instant case/) that they were firm in their belief in the fundamental rights of academic freedom; they espoused the worth and dignity of every man /i.e. human being/; they were committed to the idea that when human rights are at stake, the principle of due process should be scrupulously observed; they could not in good academic conscience support the action taken (against Sr. Mary Grace Kos, then President

of St. Mary's College).

37. Due to the chaotic situation and especially as a consequence of Plaintiff's own and his colleagues protest against the dismissal of Sister Mary Grace from the Presidency of St. Mary's College, Plaintiff's own and his colleagues' security was put in jeopardy. Some of them without tenure were forced to leave. The others, including Plaintiff, with permanent tenure, were blacklisted and everything was done continously to make their life at St. Mary's College impossible. On January 10, 1968, the web of the conspiracy against Plaintiff enlarged and became more visible; new persons became parties to . . . . /it/. One of them, the late John J. McGrath, newly elected President of St. Mary's College, notified Plaintiff that the committtee of Academic Rank and Tenure . . . "unanimously decided not to give (him) permanent tenure."* This unanimous decision . . . was transmitted

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* After the Petitioner showed to him that following the College rules of tenure, the Petitioner already entered in possession of tenure, President "entenured him."

in writing to the President in form of a written report with its "justification" for Plaintiff's dismissal, or better, unknown accusations expressed against him. And this continued to be a part of the "Confidential File" . . . /regarding/ Plaintiff. When the latter asked to face these accusations and the accusers, . . . President and Vice-President . . . refused . . . contrary to the American Association of University Professors principles to which . . . (said) College subscribes and which were part of Plaintiff's contract with St. Mary's College.

38. On January 23, 1968, with complete disregard for due process, a secret "meeting of the Sociology Department..." took place without notifying Plaintiff, who was then its chairman, to "plot" further against him. . . . Plaintiff learned that this secret meeting took place . . . from President John McGrath by his letter of January 30, 1968, in which he informed the Plaintiff about:

> "the decision which was made at the meeting on Tuesday, January 23, 1968

/by which/ your term of office as chairman of department of Sociology is terminated as the above date. . . ."

Who initiated this secret meeting, who presided at it, what was reported to the President . . . against the Plaintiff, the latter could never find out - this being considered "confidential" - a part of Plaintiff's file.

. . . .

40. On the following day (i.e. January 24, 1968), ... (d)uring his first contact with the General Faculty, Administration and Staff, President McGrath announced . . . Plaintiff's dismissal from (the chairmanship of the Sociology Department) . . .. (T)he new acting President . . . implicitly accused Plaintiff of being the "cause" of "sustained difficulties" in . . . the Sociology Department . . . .

41. Thereupon, on February 2, 1968, Plaintiff sent to St. Mary's College Board of Trustees an "appeal" - in conformity with Procedural fairness and in accordance with . . . . contractual agreements between Plaintiff and St. Mary's College . . . . requesting

that Plaintiff

> "be heard and that (his) rights and privileges ... (be) restored and that such a gross violation of (his) own, and the academic freedom of others be corrected . . . ."

Following that (appeal), ... Plaintiff was informed ... on February 21, 1968, by a letter written by . . . the secretary of the Board of Trustees, that, "since the matter of which . . . (the Plaintiff) wrote concerned the local administration of the College, this was referred to Reverend John McGrath, the Acting President." After that, President again made known to Plaintiff that his decision (about the Chairmanship) was irrevocable. (p. 13)

. . . .

43. . . . . As the table on "Compensation and Salary ..." (included on p. 14) shows, Plaintiff was constantly deprived of his normal economic compensation corresponding to his rank and status . . . . (from 1968- 1969 school year to 1971-1972) . . . . /ss 36.-43., pp. 11-13/

. . . .

44. COMPENSATION AND SALARY FOR THE ACADEMIC YEARS: 1967-68, 1968-69, 1969-70, 1970-71, 1971-72 AT ST MARY'S COLLEGE COMPARISON OF DR. ANTHONY OSTRIC'S EARNINGS WITH THOSE OF THE OTHER PROFESSORS OF THE SAME RANK WITH LOWER ACADEMIC STATUS

The AAUP rating	Academic	Full Prof. Average (Salary and Fringe Benefits)	Difference	Ostric's (Full Prof. since September 1966)		
				Compensation	Salary	Fringe Benefits
"D"	1967-68	$10,600	plus $901	$11,501	$10,500	$1,001
"D"	1968-69	$10,900*	plus $1,152*	$12,052*	$11,025*	$1,027*
"B"	1968-69	$17,000**	minus $4,948**	$12,052**	$11,025**	$1,027**
"B"	1969-70	$17,900	minus $5,004	$12,896	$11,500	$1,396
"B"	1970-71	$18,600	minus $5,272	$13,328	$11,900	$1,428
"B"	1971-72	about $19,500	minus $3,364	$16,136	$14,500	$1,636

*As fixed on Feb.16, 1968, when St. Mary's was on the "D" rating
**As fixed on June 28, 1968, when St. Mary's was on the "B" rating
This constructed table is based on officially provided data by St. Mary's College, supplied to the AAUP, and published in said association's Bulletin, also specified in the contracts between St. Mary's College and Plaintiff.
/E 44., p. 11/

. . . .

52. Early in April, 1973, a group of "Concerned Alumnae, Parents and Faculty of St. Mary's College" had first asked Plaintiff's wife (Mrs. Simone Ostric) and then Plaintiff himself to sign a letter, ... addressed to "Alumnae, Parents and Members of the St. Mary's College Faculty" . . . against newly planned "parietal hour policy. . .". . . . . .

53. Because Plaintiff and his wife had signed said letter . . . and because Dr. /Edward L./ Henry, then /newly appointed/ President of St. Mary's College had "learned" from Plaintiff's persistent enemies within said College (among them Defendant Rita Mary Cassidy who publicly accused Plaintiff of being the "real ring leader" of said group of "Concerned Alumnae, Parents and Faculty") that Plaintiff would be the major mover of all activities . . . against said newly planned "parietal hour policy . . ." - said . . . President made an ... /unwarranted/ and scandalous public attack against Plaintiff . . . and angrily accused Plaintiff that . . .

"(he) undercut/s/ this school /and that . . . President was/ mad because . . . /Plaintiff/ made it impossible for . . . /him/ to run this institution"! There were - besides the President and his secretary (in President's and his secretary's joint office) - several other persons present . . . waiting to be received by said President when this occured. Said President also made it known to Plaintiff, at this occasion, that the latter did not fit in at St. Mary's College and that, in his mind, he had already discarded Plaintiff who in no way could expect the equal opportunity . . . accorded to other professors at, for example, the occasion of exemption from retirement when Plaintiff were to reach the age of 65 even under best conditions, i.e. in accordance with the College Governance. President loudly and clearly conveyed this to Plaintiff on the same occasion (on May 7, 1973) by saying to Plaintiff: "We will tolerate you /at St. Mary's College/ . . . I will see you /only/ in six year when you will retire!"

. . . .

. . . .

54. Some time later however, Dr. Henry learned that Plaintiff was not at all the "real ring-leader" of these "unauthorized individuals" and he formally apologized /to the Plaintiff/ before leaving . . . St. Mary's College at the end of 1973; yet, his apology was not helpful ... /to/ Plaintiff under the circumstances. Not long after, . . . an avalanche of various attacks and discrimination . . . by some powerful individuals . . . continued ... /among them/ Defendants Rita Mary Cassidy and Donald M. Horning.

. . . .

56. In his hand-written "Confidential Memorandum" Re: "Revision of Social Work Option," dated November 9, 1976, addressed surreptitiously to Mrs. Mary Liechty and Mrs. Patricia Pilger, both Professors in the Department of Sociology, Anthropology and Social Work, Defendant Donald M. Horning, then Chairman of said Department, committed one of his conspiratorial fraudulent acts for the

illegal purpose of injuring Plaintiff by creating such a condition for him . . . that the latter, out of necessity, lose his job; following Defendant Horning's "suggestions" and through the "proposed changes" in the departmental curriculum, Plaintiff would not have sufficient /numbers of/ students in his classes, his position in the Department would be eliminated and Plaintiff would lose his job inspite of his "permanent tenure"! . . . /¶¶ 52.-56., pp. 16-18; see App. Z/1/

. . . .

. . . .

66. During an official meeting of the Department of Sociology, Anthropology and Social Work of St. Mary's College, in February of 1977, and in accordance with the Governance of the College . . . - Plaintiff made a request for an exemption from retirement at his 65 years of age (such exemption had been granted several times before to other professors who requested it) . . ..

. . . .

Section 7 of said Governance provides (in relevant part):

> "Retirement (for the faculty . . .) will ordinarily occur at the end of the academic year in which the faculty becomes 65 (for Plaintiff in June,1978) . . .. Circumstances may delay retirement. Continued evidence of instructional excellence and good health, together with instructional needs, will be governing factors. . . . In order to secure an exemption form the usual policy of retirement the following procedures should be followed. After consultation with the department, the Chairman petitions in writing the Vice President for Academic Affairs by November 15 for one year extension of the faculty member's contract, giving reasons for the request. The Vice President for Academic Affairs consults the President. By December 15 the Department Chairman shall be informed of their decision..."

68. It should be added that on several occasions, Defendant Duggan, President of said College publicly declared that, in such and similar matters, St. Mary's College operates through its Departments as its main governing units. Furthermore, according to the Minutes of the Department Chairmen meeting of said College (held on March 16, 1978 and led by Defendants William A. Hickey, Vice President of said College),

> "Chairmen were agreed that the responsibility of maintaining a strong core of faculty should remain in the individual department.
>
> . . . .
>
> /It/ was agreed that each department will have to determine their own set of procedures for consultation with their faculty members, keeping in mind the spirit of the College's regulations."

. . . .

Since the time of the decision made by its faculty to do so - during the departmental meeting while discussing the material for Self-Study Report, 1976 /prepared/ for the North Central Association of Colleges and Secondary Schools - the Department of Sociology, Anthropology and Social Work did determine its own set of procedures; following said decision, said Department had to act democratically with its chairman acting as presiding officer while all departmental decisions . . . /were/ to be made by yhe majority of the members of its faculty.

69. On March 31, 1977, three members of the faculty of said Department (Professors Mary Liechty, Patricia Pilger and Dennis A. Terzola) prepared and signed a petition ad-

dressed to Defendant William A. Hickey, Vice President of said College, requesting an exemption from retirement for Plaintiff at his /attainment of/ 65 years of age.

70. Thereafter, during an immediately following (official) meeting of said Department, said professors-signatories made a motion that their said written petition be accepted as a formal request in lieu of the procedure outlined in the Governance of the College, and they stated the reasons for their request in said petition while it was read in its entirety. Said motion was accepted by the majority of the faculty without a dissenting vote; two other members (Defendants Sr. Rose Bernard Tarleton and Donald M. Horning) were twice asked if they had any objection to anything stated in said petition and neither of them raised any objection. Then this said - now departmental - petition (along with a similar petition from sociology majoring students of April 6, 1977) was submitted to Defendant Hickey, Vice President

of said College.

71. In said petition it was stated:

> "...we...request that the retirement provisions referred to in the Governance of the College manual (June 14, 1975) be waived in Dr. Ostric's favor and that he be granted an exemption from the usual policy of retirement and retained as a full-time faculty member of St. Mary's College and our department beyond the 1977-1978 academic year. . . . . Dr. Ostric's retention beyond the usual retirement . . . age is, we feel, necessary for an indefinite period of time in order to ensure the best interests, vitality and quality of our department and its curriculum.
> According to the relevant sections of the Governance of the College manual - Section 6, "Retirement," p. 55, and Section 7, "Retirement", pp. 61-62 - "Circumstances may delay retirement." We feel that these circumstances now exist, and the following represent pertinent considerations.
> First, Sociological Theory, a requirement for Sociology majors, is an extremely difficult area to master. . . . . Professor Ostric has mastered Sociological Theory, a judgment shared by his colleagues, administrators and students. In addition to his mastery of Sociological Theory, Professor Ostric is the Department's 'resident' Anthropologist, the only member of our department who possesses the breadth and depth of expertise needed to provide students with the knowledge, appropriate perspectives and courses required in the department and by its curriculum for departmental majors and students in general . . . .
> Second, Professor Ostric enjoys excellent health. . . .

> Third, and most critical, is the fact that instructional needs of the department currently and in the forseeable future require Dr. Ostric's retention beyond the usual retirement age. . . . Sociological Theory, especially, is the backbone of the discipline, crucial to the Sociology major, of extreme importance to our Social Work majors, and a focal point for research and the integration of thought for a liberal arts college.
> For all these reasons, we ask that the administration decide favorably on our petition and retain Professor Ostric in conformity with our request stated above."

72. On April 6, 1977, a large number of students from the Department of Sociology, Anthropology and Social Work addressed a petition to Defendant William A. Hickey, Vice President of said College in which they stated:

> "...We believe that neither Saint Mary's, the Department of Sociology, Anthropology and Social Work nor the students can afford the costs to be incurred if Dr. Ostric is permitted to leave.
> Dr. Ostric's dedication, loyalty and worldly wisdom is irreplaceable. To permit the retirement of a man so young, vibrant and energetic is to suffer too great a loss.
> Sociological Theory is very difficult subject matter. However, due to Dr. Ostric's expert guidance, direction and ability to communicate, we have been able to grasp and understand Sociological

Theory.
We believe that it is too great a loss to deny future sociology majors the necessary experience of being taught by such a fine master and scholar as Dr. Ostric.
Therefore, we submit this petition to you with hopeful desire that you see the wisdom of our request to retain Dr. Ostric beyond retirement . . . age."

73. A similar petition was addressed by students to Defendant Hickey, on December 12, 1977.

74. Mr. Daniel A. Manion, Attorney at Law, wrote a letter, dated October 21, 1977 on Plaintiff's behalf, to Defendant Duggan, President of said College "regarding ... /Plaintiff's/ application to secure an exemption from normal retirement in accordance with Section 6 ... and Section 7 ... of "The Governance of the College"." In said letter, Attorney Daniel A. Manion stated:

"... in spite of the continued correspondence referencing a desire for the exemption, there has been no official response . . . .
Please let me know as soon as possible the status of this request for an exemption. . . .
I would most appreciate your response before the end of the month."

75. Aside from a note written by Sr. M.

Alma, C.S.C. Administrative Assistant, dated October 25, 1977 and addressed to him, Attorney Daniel A. Manion received no direct answer from Defendant Duggan to the letter of October 21, 1977. The complete content of said note was as follows:

> "President Duggan is off campus this week attending a meeting in the East. I shall refer your letter concerning Dr. Anthony Ostric to him immediately upon his return.
> You should be hearing from him in the near future."

76. Plaintiff however was informed by Attorney Daniel A. Manion that - following Attorney Manion's said letter of October 21, 1977, addressed to Defendant Duggan - Attorney Manion had been approached by Defendant Frederick F. Thornburg at the Notre Dame Sport Stadium during a football game (at the end of October or the beginning of November) where Attorney Thornburg stated to Attorney Manion that Plaintiff was not going to receive any relief from Defendant St. Mary's College and he would not receive a favorable to his application to secure an exemption

/from retirement/ at . . . age . . . 65.

. . . .

78. On November 11, 1977, Plaintiff had sent to Defendant Hickey, Vice President of St. Mary's College, his application for a sabbatical leave starting "either with Fall semester 197841979, if his application to secure an exemption from retirement ... /would be/ approved, or for the next semester, i.e. Spring 1978, if said application for exemption from retirement ... /was/ . . . not approved." (Plaintiff's latest sabbatical leave was accorded six years before, during the Fall semester 1971-1972). Plaintiff sent said application for a sabbatical leave in accordance with Section 8 of said "Governance of the (St. Mary's) College", which stipulates (on pp. 62-63):

> "The sabbatical leave program makes it possible for members of the teaching faculty to take time from normal academic duties to engage in activities of professional value otherwise not possible. The college recognizes that the long-term values of sabbatical leave program outweigh any short-term disadvantage to students, instructional programs, and purposes of the college.

> A faculty member is eligible for a sabbatical leave after six years of service to the college with academic rank.
> It is the responsibility of the Department Chairman to anticipate requests for sabbatical by including in the department budget information concerning the sabbatical status of his members ....
> The sabbatical leave entitles a faculty member to his full salary for one semester or one-half of his salary for full-year sabbatical leave. The sabbatical leave also provides faculty members with the opportunity to continue their participation in the fringe benefit programs of the college on the same terms in effect during the previous year."

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80. Only on December 13, 1977. . . was Plaintiff informed, indirectly through Defendant McKee . . . that Plaintiff's request for an exemption . . . /from/ retirement (made in February 1977!) had been denied. There was no reason given to the Plaintiff for this denial; the complete content of said note was as follows:

> "In accordance with the provisions of The Governance of the College I wish to advise you that the President and I have met to discuss the request from Professor Ostric that he be granted an exemption from the College's stated retirement policy. Please be informed that this request has been denied."

/§§ 66.-81., pp.23-28/

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. . . .

92. Following this denial of both said requests, Plaintiff decided to commence civil action by filing a complaint with the United States District Court for the Northern District of Indiana against Defendants St. Mary's College and other Defendants who were at that time participating conspiratorially in illegal actions against Plaintiff (see § 3, p. 1).. . .

93. Before any such civil action in Federal Court - and in conformity with the Equal Employment Opportunity Act - Title VII, Section 706 (c)(d) and Indiana Civil Rights Law (IC 1971, 22-9-1 /22-9-1-1--22-9-1-12/ - Plaintiff filed (on February 9, 1978), a Complaint of Discrimination against St. Mary's College with ICRC under its Docket No. EMre 7802009, wherein Anthony Ostric was the Complainant and St. Mary's College was Respondent. (See: ICRC's Transcript of proceedings, pp. 1-4) Because - following said Indiana Civil Rights Law - ICRC has the legal power to process the Complaint of discrimination based exclusively

"on race, religion, color, sex, handicap, national origin or ancestry," Plaintiff could and did, in his case, base his Complaint on his Roman Catholic Religion (beliefs) and his Croatian national origin or ancestry, or culture. Whatever the outcome of his said Complaint, positive or negative, Plaintiff intended to seek relief form the Equal Employment Opportunity Commission on similar grounds before commencing civil action in said Federal Court on this and/or other grounds (see § 92. p. 33).

94. Meanwhile - by his application (dated March 16, 1978) presented to Defendant McKee, Chairman of the Department of Sociology, Anthropology and Social Work (with a copy to Defendant Duggan and Hickey) - Plaintiff requested that

> "...in the best interest of ... /St. Mary's/ College, Department and students ... /Plaintiff/ be nominated for the positions ... /then/ opened in ... /said/ Department so that he continue to teach the courses in Sociological Theory as well as in Anthropology for one or two years more. While ... /the said Department's faculty were/ ... searching ... /for Plaintiff's/ replacement by a qualified person to teach successfully said courses."

95. On March 30, 1978, during a long official meeting of the faculty members of the Department of Sociology, Anthropology and Social Work of said College, (presided by Defendant Chairman Michael McKee and attended by faculty members, Mrs. Patricia Pilger, Charles Martucci and Defendants Donald M. Horning and Sr. Rose Bernard Tarleton) Plaintiff's said application was discussed for more than an hour, only to be rejected at the end by the majority of the members of the Faculty of said Department . . . .

96. That which happened during said meeting of March 30, 1978 . . . . represents facts (evidence) in support of Plaintiff's claim that he was a victim of conspiracy, discrimination and retaliation on the part of Defendant St. Mary's College and the other Defendants. . . .

97. The following are some excerpts from a transcript of said tape recording of proceedings of said Department meeting . . . .

Defendant McKee*: " In reference to consideration of Dr. Ostric ... (he) is ... in such a unique situation. I would like to consider him today ... rather than putting it off... I think we need to consider more than just things about the candidacy that we would consider in other candidate's applications, that is, how he fits in with the College and how does he relate to the Administration; how does he relate to us, and things of this nature.... Does anybody object to talking about Dr. Ostric's candidacy today?"

Defendant /Sister/ Tarleton: "I have the whole ethical problem of litigation in confidence and to what extent one can speak, and, I mean, I am not quite really sure in terms I'd would like in terms of what is appropriate some people to tell us."

Defendant McKee: "Well, the Civil Rights Commission in my estimation, at least what I understand from Dr. Hickey** what he gets from his lawyers and Dr. Ostric's lawyers(?!) the College is being examined in the sense of Civil Rights being breached from the areas of religion and areas of national origin. So this is the litigation to which Sr. Rose Bernard (Tarleton) refers. Of cause, being a member of the C.S.C. (i.e. Congregation of the Sisters of the Holy Cross) does complicate (sic) matters for Sister so that's an area - -"

Defendant Horning (interrupting): "I think it complicates it for all of us in the sense, ... you know - if the College is

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* Chairman of the Department of Sociology
** Vice President and Dean of said College

being sued, then I think it inappropriate for the Department to consider him, quite honestly, because obviously that's another point of action that we can't compromise or in any sense of the word continue to advocate - -"

Defendant McKee (interrupting): "I have not received anything in writing at all. I am only reporting to you what Dr. Hickey reported to me. I have not spoken to him since - it was a month ago. I've received nothing in writing ... All I know is what I hear from Dr. Hickey and haven't heard anything officially about these reports. So, there are questions of the appropriatness of considering him. I think, that even though we all have to consider those kinds of things, that perhaps even still, Sister Rose (Bernard Tarleton) has yet an additional problem, being a member of ... (said) Congregation, that perhaps we don't, but I guess we all have to make our decisions about what would be involved were we to say anything pro or con right now. Don (Horning), is there anything else you wanted to add to that?

Defendant Horning: "No, ... But again I still have that uncertainty, that uneasiness about the litigation question. I guess I'm just not - -"

Professor Martucci (interrupting): "The Civil Rights Commission - - "

Defendant McKee: "Does anyone know - If someone decides to examine the - - situation, is that, legalistically speaking, a suit or is it simply a civil procedural, and examination of that sort - - which is not through the courts other than just through the organization of the Indiana Civil Rights Commission?"

Defendant Tarleton: "I don't know - - "

Defendant McKee: "I don't think we're really as clear as we need to be there."

. . . . . .

Defendant Horning: "Yeah! I think what we really don't know is whether that court case involves a request for continuation, slash, reinstatement or whatever, or whether it's some kind of punitive damage against the College that has absolutely nothing to do with the appointment of the Department. I guess I feel uneasy about picking up things that would relate to an appointment if in fact there is legal action. If it's a case of his saying: 'I want punitive damages of $200,000 from the University or College because my Civil Rights have been abrogated', then I think we can act independently, but if it's a request that he be continued and be reinstated, then I think - - -"

. . . . . .

Defendant McKee: "...Pat /i.e. Professor Patricia Pilger/, what do you think - -?"

Professor Pilger: "Well, I think you're all well aware how I feel on the subject. It's - - I do want to clarify some points. First of all, Dr. Ostric is applying for the theory, anthro/pology/ position full-time, is that right?"

Defendant McKee: "...To teach the courses in Sociological Theory as well as courses in Anthropology. That's his /i.e. Plaintiff's said/ memo of March 16, /1978/ -"

Professor Pilger: "Okay, in regard to the action - - - it is my understanding, at least from what he said to us in the meeting is that this is an action of investigation. I don't see this as a court case, but I don't know."

Defendant McKee: "Now in an action of investigation .... How do they investigate?"

Professor Pilger: "I don't know."

Defendant McKee: "...If its not litigation technically, but investigation by the commisssion then I guess we don't know- - - -"

Professor Pilger: "Okay, then, I'd like to address the point at hand. Number one, our major problem all along has been filling the Theory position. For two years I have sat with the Department and looked at applications, discussed applications in regard to someone competent to teach (Sociological) Theory.... In those two years I have seen several applicants and I have also seen very few that I think are at all competent to teach (Sociological) Theory....

. . . . . .

/then/ ... a year ago, ... /Professors Mary/ Liechty, ... /Dennis A./ Terzola and myself /i.e. Patricia Pilger, all three of said Professors being at that time regular members of said Department/ requested that Dr. Ostric be kept on beyond retirement ... and at that time we wrote ... our letter to ... /Defendant/ Hickey /which/ was dated ... March 31, 1977 ..." (About said letter, see /NR 1./ §§69-71, pp. 24-25 /see the present Appendix, pp. 96a-99a, supra/).

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"The question in my mind is . . . if the other candidates that I have seen there is someone with the confidence and knowledge of theory and ability to communicate it to the students that can compare with him /i.e. Dr. Ostric/ and I personally, as you may or may not be aware, can speak directly to his ability to teach. I have audited two prehistoric Anthropology classes, I have audited Contemporary Theory from him currently, and I

have audited Classical Theory from him. In the classroom he is without question outstanding in relation to his ability to comprehend, to understand theory, to present the individual theory in an objective manner. . . . He critiques the theorists both positively and negatively, and I feel students without question are able to understand an extremely comprehensive and extremely difficult subject area. I therefore would favor Dr. Ostric above all of the candidates that I have seen for the position open."

Defendant McKee: (After a long pause or silence at said meeting) "Would you (anyone) like to respond to anything Pat (i.e. Professor Pilger) has to said or do you have anything further you want to discuss?"

. . . . . .

Professor Martucci: "...In view of the history, in view of where these letters, or the kind of reception these letters get, I wonder about how this folder, this candidate (i.e. Plaintiff) will be received by the Administration."

Defendant McKee: "...It really makes no difference because we're talking about a college hiring, not a Department hiring. I think we have to remember that, unless we're to go through an exercise of futility - - we must come up with a candidate that must be acceptable not only to us, but to the administration and to us which means - - - - - give the administration a pretty good idea, and the congregation - - and the board - -. So we have to remember as I pointed out, the facts of life; we all resolve that if we send Dr. Ostric's folder as a candidate, he will simply be refused - - - We can do that - - - if we send Dr, Hickey reference of three, four or five names, the trouble is - - - - - Dr. Ostric...."

. . . . . .

Professor Martucci: "Why, Pat? Why do you think he would be more acceptable to the Administration this year than he was last year? If his petition went forward - What has changed?"

Professor Pilger: "I am not saying he's going to be more accepted - - - (he is) the most competent person I've seen for the position."

Professor Martucci: "That part aside, the best that we can do would be in a sense, stepping forward with a vote of confidence from his colleagues within the Department, knowing full well or at least feeling very strongly that the administration's not going to follow. Would we really be serving the man, helping the man at all in this way?"

Professor Pilger: "I don't understand the problem about the administration not accepting him." (i.e. Plaintiff)

Professor Martucci: "Well, the administration turned down his request last year."

Professor Pilger: "On retirement - - - -"

Professor Martucci: (interrupting)"Well, they pursued his retirement - - - - which is a sense a "we don't want to carry you over (sic) - - -"

. . . . . .

Yes but - - - Even that I guess I'm just trying to be practical. I'm one of the abstainers in that group. There is precendence wherein the College, where individual professors who have reached age sixty five have been offered a contract we're no longer denying that - on a yearly basis. This contract and this procedure, this policy does not hold for Dr. Ostric if at least as as I understand it."

Professor Pilger: "There are other persons who are formally retired, then rehire/d/."

Professor Martucci: "Right. But - - - with such a subscribed denial preceding that? - - - If we send this (Plaintiff's) folder along with two other folders; we in fact send three folders. Or do we send two folders, two, two viable candidates? Is he in fact a viable candidate in Dr. Hickey's eyes? (sic) And - - - - at least as I perceive it, the requirements seem to say no, on a viable candidate. Okay, I don't know whether you agree with that idea or not - - - . Practically. Pragmatically: is it fair - - - in fact our problem when we put him into the pool knowing full well that he's not going to, he is not going to come out a successful candidate or at least feeling really very strongly - - Do we help him? Do we do anything positive for him? I think maybe we have that kind of responsibility too to the man. To say, you know, do we have the right to raise his hopes in a situation when we kind of feel he's not - it really isn't very fruitful? And I think we might be doing that under these circumstances - - . . . . . It doesn't look positive, I don't think we have a viable candidate. Without questioning his ability in the classroom at all. I am not doing that. I can't speak to those things. I presume that his ability in the classroom is as you say it is. I trust your judgment. There is one thing - I presume great evaluations, and all of the other kind of stuff, the students seem to do well, and the URE's (i.e. Undergraduate Record Examination's) and all, all the other indicators that are available to us. No question in any of that. Is he viable candidate because of - - the other circumstances, the critical circumstances. I guess that's a question I have, and that's not a state-

ment - it's a question."

Defendant McKee: "Anything else you want to say Pat(ricia Pilger)?"

Professor Pilger: "No."

Defendant McKee: "Okay. Statements from anybody else? About the candidate? I am - as you can see proceeding as though he were a candidate, if he happens to be accepted . . . and I am pushing it ahead now instead of waiting until the middle of April because I think we owe to him to say to him that we're considering him, and all of what we've said, ... and all of the reasons: legalistically, politically - - affirmative action-wise, whatever, we still come to the bottom line where we're going to have to make a decision to vote yes or no as to whether we want to put him into a candidacy - a candidate position as being viable and continue further - - - we should not further delay the normal candidate procedures. Otherwise, then what I'll do is ask for categorization like we would for any other candidate. He has asked to be considered like other candidates and you'll have your opportunity to say, then, how you felt about candidate. Okay. Any other comment? Questions? Okay. Since we're going to consider him like any other candidate, we'll simply go around the horn - - Charlie (Martucci), and we'll start with you."

Professor Martucci: "Well, I don't know, there's just, - - - - so much more we know about this cnadidate than any other candidates. He certainly, he certainly qualifies, there's no question of it. Under any other circumstances I would give him "A" (i.e. excellent). I just don't think it's realistic. I guess I am mentioning the question that I've raised before. I don't think it's realistic to expect me to provide any kind

of grade. I don't have /a/ grade."

Defendant McKee: "Okay, Sister (Tarleton)?"

Defendant Tarleton: "I am not grading because I don't think the criteria of comparison under the circumstances are equal, but I would not recommend that we put forward this candidate - - - -"

Defendant McKee: "Don (Horning)?"

Defendant Horning: "I agree with Sister (Tarleton). I think its inappropriate to grade him under these circumstances . . . . . "

Defendant McKee: "Pat (Pilger)?"

Professor Pilger: "It should be obvious - I give him "A" (i.e. excellent)." . . . . . .

Defendant McKee: "- -Okay. Well it's three out of four. He's not a candidate so, it speaks for itself right there, but I think that I should take a stand - - - - - - - - - - - and I go along with the three out of four, being that I do not consider this candidate (i.e. Plaintiff) as a viable candidate - - - - - - - - -" . . . . . .

98. On March 31, 1978, however, Defendant McKee brought to Plaintiff, in the office of the latter, a note (dated March 30, 1978) addressed to Plaintiff in which it was stated:

> "Following your March 16/17, 1978 request, the Department today review/ed/ your application .... /and/ after /a/ lengthy discussion (a tape recording is available for your review), four out of five members of the faculty voted that you should not be consider/ed/ as a candidate."
> /¶¶ 92.-98., pp. 33-39/

. . . .

100. In its letter addressed to Defendant Hickey, Vice President of said College, dated March 1, 1978, ICRC had enclosed a copy of Plaintiff's said Complaint - Re: Anthony Ostric, Docket No. EMre 7802009 - and made

". . . a request for the following data:

(1) Records indicating how often a waiver of retirement is granted. (Supportive documentation.)" (See: said Transcript of Proceedings, p. 5)

(2) The reason or reasons for refusing Prof. Ostric's request for waiver of retirement and sabbatical leave. (Supportive documentation.)" (See: said Transcript of Proceedings, p. 5)

(A copy of said request was not served in time to the Plaintiff by ICRC.)

101. On April 3, 1978, ICRC received from Defendant Hickey a letter (dated March 30, 1978, which is incorporated in said Transcript of Proceedings, pp. 6-10):

"Re: Anthony Ostric
Docket No. EMre 78020091

In following up to . . . /Defendant Hickey's and ICRC representative's/ conferences and in preparation for. . . /their meeting /in ICRC's office, in Indianapolis, IN/ on Tuesday, April 4,

1978, we /i.e. Defendant Hickey and said legal representative and particularly, in the name of the latter, Frederick F. Thornburg/ are hereby responding to the inquiries set forth in . . . /ICRC's/ letter of March 1, 1978."

(. . . Defendant Hickey did not serve a copy of said letter . . . to Plaintiff.)

102. Said meeting - "Re: Anthony Ostric, Docket No. EMre 78020091", did take place, on April 4, 1978, in ICRC's office in Indianapolis, IN, but . . . (in the Plaintiff's absence).

103. Statements made and information provided by said Defendants, in the name of said College either during said "recent conferences . . ." (prior to the) meeting of April 4, 1978), or during said meeting, as well as those provided in said letter (dated March 30, 1978, filed with ICRC on April 3, 1978 and signed by Defendant Hickey) were false and fraudulent, as the following facts will show:

(1) On April 10, 1978, during a telephone conversation with an ICRC agent (Joseph Sospirato), . . . Plaintiff had been told . . . that Defendant Hickey (seriously) declared to (Mr. Sospirato) that Plaintiff was granted

his "second sabbatical leave during the Spring semester of the 1972/73 academic year so that . . . /Plaintiff/ . . . could prepare . . . /his/ brief in Court (against St. Mary's College!)" and that it was too early to give to Plaintiff . . . a sabbatical leave (again) at the time . . . he requested. This "reason" . . . /offered by/ Defendant Hickey was . . . fraudulent . . .; it represented /another/ instance . . . of the perversity of the truth made by said Defendant(s).

. . . .

(3) The " . . . self-explanatory summary (. . . attached to Defendant's letter of March 30, 1978 /serving partly in answer to the ICRC's request reported above, in ¶ 100/) was . . . false and fraudulent; /it/ . . . neither include/d/ a listing of "all . . . the names of various faculty members who have retired" during the last decade, 1968-1978, . . . nor the names of those faculty members to whom the exemptions from retirement were granted; the /latter/ listing . . . (was) not complete; it (did) not in-

clude, for example, Professors Louis J. Scherer and Grace Sullivan McGuire among those . . . exempt/ed/ from retirement . . . during said decade.

. . . .

104. It is also stated - in said letter (dated March 30, 1978), signed by Defendant Hickey and prepared by said College's legal representative - that

> For the reasons noted above, neither Professor Ostric's religion nor his national origin played any part whatsoever in the decisions on his request for exemption from retirement and for sabbatical leave. To so contend borders on being illogical when one recognizes that Professor Ostric had been with the /St. Mary's/ College /Notre Dame, IN/ for thirteen (13) years prior to his retirement date /June, 1978/ . . ."! (Emphasis added.)

These statements are not only fraudulent but also represent a false and malicious publication . . . fabricated . . . (to defame and injure) Plaintiff's reputation . . . even more so in . . . remaining secret /.They were/ surreptitious and underhanded; in addition, they were "handled" conspiratorially between those Defendants who fabricated them and

those who received them, i.e. ICRC, and in a way as to remain unknown to Plaintiff as long as possible.

105. That said statements are indeed of such a nature . . ., it becomes obvious from /that/ already written in this Complaint . . .. What follows will make it even more obvious.

(1) Even before ICRC received (on April 3, 1978) said letter from which said statements were taken, not only Defendant/s/ Hickey and Frederick F. Thornburg, but also ICRC had been aware that . . . /these/ statements could not be and were not true; Plaintiff made them aware of it.

(2) Defendant Hickey was however more aware than anyone alse of what was going on at said College "for thirteen (13) years prior to . . . /Plaintiff's forced/ retirement" . . . and what was in part described in this Complaint in precedent pages and in particular what follows paragraph 24. /See above pp. 82a-115a; see also App. Z/1, in Appendices, I., pp.132 a-135a/. It was the same Defendant Hickey who, in the name Defendant College,

took part in a negotiation with Plaintiff in preparing a tentative compromise settlement proposal (in June, 1978) . . ..

(3) It was furthermore Defendant Hickey, in his role of Vice President and Academic Dean, . . . who praised on several occasions Plaintiff's passion for searching the truth and for presenting a situation "as it is". In a TO WHOM IT MAY CONCERN (dated June 4, 1975) as well as in the letter addressed . . . to several Institutions (Foundations and Banks) said Defendant Hickey wrote:

> "On behalf of Dr. Anthony Ostric, Professor of Sociology and Anthropology /and Social Work/ at Saint Mary's College, Notre Dame, Indiana, I will submit his research proposal officially as you direct. We hope that you will seriously consider partial or total funding of this <u>significant scholarly endeavor</u>.
>
> I personally know <u>few individuals more dedicated to their scholarly work than</u> Dr. Ostric. His <u>intense desire to present a 'fair and complete picture'</u> to his students and to his fellow academicians is <u>one of his outstanding contributions</u> to our College." (Emphasis added)

(4) In view of all this how can one otherwise understand then that Defendant Hickey was advised by said Defendant/s/ Lawyers associated . . ./with/ Thorngilde (in

particular . . . Defendant Frederick F. Thornburg) to sign said letter (dated March 30, 1978). Even though Defendant Hickey knew about the false, fraudulent and slanderous nature of . . . /its/ statements . . . ., Defendant Hickey signed it!

106. It appears, therefore, that said letter must have been (surreptitiously) sent to ICRC . . . with a preliminary understanding on the part of Defendants Hickey, Thorngilde, Thornburg and other Defendants reached through said telephone conferences before said meeting on April 4, 1978 with the agent of Defendant ICRC about the readiness of the latter to "cooperate", i.e. to act conspiratorially against Plaintiff, i.e. become party to said conspiracy (. . . /under/ 42 U.S.C. /§§/ 1985 and 1986) which was going on before ICRC became party to it at the end of March and the beginning of April 1978. From this time on, ICRC /and Defendants ICRC Commissioners and other Defendants Public Officials/ committed several instances of wrongful neglect . . . against the Plaintiff in furtherance of the

previously described (SS 29-30 and subsequent) object of said conspiracy against Plaintiff. In so acting, ICRC injured Plaintiff in his person and property and /"under color of law"/ deprived him of his rights . . . (secured by the Constitution and laws, in particular by the First, Fifth, Seventh and Fourteenth Amendments to the Constitution of the United States) . . ... /SS 100.-106., pp. 40-42/

107. On April 13, 1978. ICRC addressed to Defendant St. Mary's College, c/o/ Defendant William A. Hickey, Vice President and Dean of Faculty, a letter . . ., the content of which was concealed from Plaintiff until he learned about it . . . /upon receipt of ICRC's/ Transcript of Proceedings, on November 30, 1978, in which is stated:

> "Upon receipt of the Complaint attached hereto (Docket No. EMre 78020091, Anthony Ostric v. St. Mary's College), you have the following options under the Rules of the Indiana Civil Rights Commission:
>
> 1. You may grant immediate relief to the Complainant /i.e. Plaintiff/ within five (5) days of receipt of the complaint . . ..
> 2. You may file a written answer to the complainant within twenty (20)

> days of receipt of the complaint . . . .
>
> If you do not grant immediate relief to the Complainant /i.e. Plaintiff/ within five (5) days, then a failure to a written answer to the complaint within twenty (20) days will be deemed as an admission of all allegations in the complaint . . . .
>
> Please be advised that the Indiana Civil Rights Law makes it illegal to retaliate against an individual because of the filing of a complaint (IC 1971, 22-9-1-6(j). The Commission considers retaliation a most serious matter, and will act expeditiously to prevent such illegal conduct," (Emphasis added.)

108. After having received this . . . letter (of the ICRC), Defendant St. Mary's College completely ignored said options as well as warnings against any retaliation by said Defendant because of Plaintiff's filing of said Discrimination Complaint. /It should be pointed out that/ even before said letter was addressed to Defendant St. Mary's College, (i.e. before April 13, 1978, as well as after . . .) the ICRC had been aware of Defendants St. Mary's College, Hickey, Duggan and others' retaliation on several occasions against Plaintiff. Defendant . . . said College legal representative (Frederick F. Thornburg) dis-

regarded even the date . . . /set/ by himself (May 22, 1978) to respond to ICRC's letter; Defendant Thornburg . . . fixed said date in his letter addressed to the ICRC . . . April 26, 1978 . . .. No action was taken either in conformity with said "options under Rules of the Indiana Civil Rights Commission . . .", or with ICRC's requests and warnings. (No action was taken either by ICRC against said Defendants who retaliated against Plaintiff); ICRC accepted this complete disregard for . . . /its/ Rules and for Indiana Civil Rights Law by Defendants St. Mary's College, Thornburg and Thorngilde legal firm, without any sanction, or even admonishment.

109. Instead of a proper response to . . . (said) request by choosing one of said options, Defendant St. Mary's College's representatives filed a <u>false affidavit</u> with the ICRC. /See App. Z/2, in <u>Appendices</u>, I., pp.136 a-138a/ (<u>No copy of it was served in due time to Plaintiff</u>, either by Defendant St. Mary's College, or Defendant ICRC; Plaintiff <u>never</u> received

Defendant St. Mary's College's answer to his Discrimination Complaint .. . ..

110. That said affidavit is false, . . . a clear case of perjury constituting . . . fraud and conspiracy (i.e. .../among/ said Defendants Affiants and lawyer, Frederick F. Thornburg, . . .) is evidenced by the following:

(1) Said Defendants - Affiants - together with Defendant Frederick F. Thornburg, their legal adviser - attached to said affidavit several exhibits which were " . . . made a part of . . . by reference thereto . . .", to demonstrate the purposes for which the Corporation of St. Mary's College, Notre Dame, is formed and its nature as well as others of its characteristics, yet they intentionally . . . /failed/ to attach to said affidavit the most pertinent document of all: Articles of Incorporation of St. Mary's College, Notre Dame /App. I*, in Appendices, II., pp.218a-223a/ (This document was discovered by Plaintiff through his own extended and persistent effort . . . then sent . . . to ICRC, which incorporated it in said Transcript of Proceed-

ings, pp. 51-54.) to conceal the real "purposes for which the Corporation (of St. Mary's College, Notre Dame) is formed . . .", its nature, its organization, its ownership and its management, as well as its property.

(2) Contrary to what is deposited and stated under oath in said affidavit and (known of . . .) Affiants "own personal knowledge . . .", there is no indication in said Articles of Incorporation, neither direct or by implication, . . . that said Corporation "is organized (pursuant provisions of said Act of 1971) for religious . . ./as well as educational/ purposes and /existing as/ . . . a charitable institution . . ." (Emphasis added.) Consequently, there could be no existing legal basis for ". . . The Corporation of St. Mary's College . . . /being/ currently recognized by the Internal Revenue Service as a tax exempt /for the reasons of being at the same time/ religious, educational, charitable organization under Section 501(c)(3) of the Internal Revenue Service Code . . ." (emphasis added); there could be no . . . legal basis for such

recognition of said Corporation by the Internal Revenue Service, had said statement even been "deposit/ed/ and state/d/ (under oath)" by said Affiants, and had it been declared so by them as facts which "Affiants know /based/ on their personal knowledge . . ." . . ..

(3) Furthermore, what is deposited and and stated under oath in said affidavit in its paragraph (5), concerning the question dealing with who owns and conducts The Corporation of St. Mary's College, Notre Dame, is not true either; according to its Articles of Incorporation, said Corporation is formed "pursuant to the provisions of the Indiana Not-For-Profit Corporation Act of 1971 . . ." and - contrary to what is stated in said affidavit (in paragraph 5) - said Corporation is such an independent, Not-For-Profit corporation organized for educational purposes; it is not ". . . an institution owned and conducted by a religious institution, the Sisters of the Holy Cross . . ." (emphasis added).. . .

(4) Besides being false and representing a clear case of perjury, said affidavit wsa made in bad faith and for the purpose of delaying Plaintiff's legal action and not to serve justice.. . .. The purpose of all these above described unlawful actions and, in particular, of said false affidavit is stated clearly by Defendant St. Mary's College's representatives themselves at the end of said false affidavit:

> " . . . THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME hereby requests the STATE OF INDIANA CIVIL RIGHTS COMMISSION to dismiss the above captioned /Plaintiff's/ discrimination complaints /sic/ (Dockey No. Emre 78020091)" (Emphasis added.)

Following all these unlawful actions and in particular false presentations by Defendant St. Mary's College/'s/ representatives as statements of facts with their knowledge of falsity with intent to deceive and for the purpose of unducing ICRC to act thereon, to . . . (Plaintiff's) damage, the ICRC joined the above described fraud and conspiracy instead of enforcing the law and serving justice; ICRC did what Defendant St. Mary's Col-

lege's representatives explicitly requested; it dismissed said Complainant's Discrimination Complaint.

111. On June 13, 1978, Plaintiff received from ICRC's Director /Defendant/ (J.L. Maynard): /ICRC's/ FINDING /App. K, in Appendices, I., pp. 44a-46a/ . . .. In its conclusive part . . ., it is simply stated . . . "No Probable Cause - Lack of Jurisdiction" /Id., p. 46a/ (Emphasis added.)

112. From that which has been stated earlier in this Complaint (in particular ~~SS~~ 100-101, pp. . . .) /116a-117a, of this instant App. Z/, one can that ICRC . . . proceeded . . . neither in compliance with the Laws, Rules and Regulations of the State of Indiana, nor with the Federal Laws, Rules and Regulations; /among/ State and Federal Laws, Rules and Regulations which ICRC violated are . . . /the/ follow/ing/: . . . Indiana Civil Rights Law, IC 1971. . . /App. E*, in Appendices, II., pp. 191 a-197a;/ The Adjudication Act, 4-22-1 . . . /App. H*, id., pp. 206 a-217a/;

the 5th and 14th Amendments to the Constitution of the United States /App. A*, in Appendices, II., p. 182a/; . . . Title 42 U.S.C. §§ 1983 . . . /,/ 1985 and 1986 . . . /App. C*, id., pp. 185a-189a/ . . ..

/§§ 107.-112., pp. 42-45/

APPENDIX Z/1

INTRADEPARTMENTAL MEMORANDUM
DEPARTMENT OF SOCIOLOGY, ANTHROPOLOGY AND SOCIAL WORK, SAINT MARY'S COLLEGE

Confidential

TO:

FROM:

SUBJECT: Revision of Social Work Option

DATE: 11/9/76

SR. ROSE BERNARD
DONALD HORNING ✓
✓ MARY LIECHTY
ANTHONY OSTRIC
✓ PATRICIA PILGER
DENNIS TERZOLA
SECRETARY
STUDENT ASSISTANT

Dear Mary and Pat:

Some quick reactions/ thoughts to your proposal for revision of the social work option:

(1) Title:

May I suggest that you change the title of your proposal to :"Recommended changes in Social Work Curricular Option" drop the word proposal in the heading ... or call it "Proposed changes ....etc"

(2) Format . . . .

(3) Proposed changes: Numbering and Sequence of Presentation in Proposal

Why not present these in their numerical sequence ... start with 330 ... then 331

then 332... also, if 330 (proposed) is to be offered currently with the internship why not renumber it to a 400 level course (the sequence number for senior level courses...)

(N.B.... even numbers are normally fall courses and odd spring... it is not an immutable policy ... but one that is recommended.

(4) Some General/Specific Reactions

point 3 ... regarding 319

I would suggest that this be conditionally phrased ... is that several options be provided in your proposal .... eg ...

(a) that 319/324 courses be combined into a single course for sociology majors covering all theories ... but emphasizing contemporary theory /Note Anthony's * belief re origin of the computer ...he feels much the same way about theory ... hence opposition to dropping 319/ **

---

* i.e. the Petitioner Anthony Ostric

** These brackets in the original

(b) that 319/324 be combined into a single course .... and that an optional course which will be highly recommended be offered focusing on "masters of thought" or "school of theory" or some other preferred clustering (theories of social order) (theories of society) (theories of deviance)

And ... some realities:

You should expect some controversy over this ... but that is obvious! It may take some careful nurturing.... so that it does not appear to be directed at theory .... that can be softened possibly by:

(a) indicationg your commitment ... absolute ... to the need for theory, and

(b) the fact that there is a theory trade-off....(applied theory) in the revised courses .... which will build on the revised 319/234 course, if approved

What I am suggesting in this is that you not tack on the clinker ... with minimal reference but come at the issue/suggestion -

head-on with appropriate rational/options etc.

Fondly

S/ DON

The most pertinent part of this Memorandum by Defendant Donald Horning, then Chairman of said Department is reproduced in the Petitioner's Complaint (NR. 1, pp. 18-19) Cause No. S79-0256 filed with the Trial Court on August 31, 1979.

APPENDIX Z/2

AFFIDAVIT*

ANTHONY OSTRIC V. ST. MARY'S COLLEGE

DOCKET NO. EMRE 78020091

STATE OF INDIANA CIVIL RIGHTS COMMISSION

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

WILLIAM A. HICKEY and JASON D. LINDOWER JR., hereinafter referred to as Affiants, being first duly sworn under oath, depose and state that:

(1) That Affiants WILLAIM A. HICKEY is a Vice President and Dean of Faculty of the CORPORATION OF SAINT MARY'S COLLEGE, NOTRE DAME.

(2) That JASON D. LINDOWER, JR. is the Controller of THE CORPORATION OF SAINT MARY'S COLLEGE, NOTRE DAME.

---

* An excerpt of this Affidavit is quoted in NR. 1, §§ 109.-110., pp. 43-44. The latter was dated and notarized May 24, 1978; Affiants: Defendants William A. Hickey and Jason D. Lindower; this instrument was prepared by Defendant Frederick F. Thornburg, attorney at Law.

(3) That Affiants know of their personal knowledge that THE CORPORATION OF SAINT MARY'S COLLEGE, NOTRE DAME is a corporation duly organized and existing under and by virtue of the State of Indiana.. . .

. . . .

(4) That Affiants know of their own personal knowledge that THE CORPORATION OF SAINT MARY'S COLLEGE, NOTRE DAME has been currently recognized by the Internal Revenue Service as a tax exempt religious, educational, charitable organization under Section 501(c)(3) of the Internal Revenue Service Code.. . .

. . . .

(5) That for the above stated reasons and because of THE CORPORATION OF SAINT MARY'S COLLEGE, NOTRE DAME, conducting activities under the assumed name of SAINT MARY'S COLLEGE, is an Indiana Not-For-Profit Corporation organized for religious and educational purposes and is in fact a school, educational and charitable institution, owned and conducted by a religious institution, the SISTERS OF THE

HOLY CROSS, Affiants respectfully submit that the STATE OF INDIANA CIVIL RIGHTS COMMISSION does not have jurisdiction over the above captioned discrimination matter or THE CORPORATION OF SAINT MARY'S COLLEGE, NOTRE DAME (SAINT MARY'S COLLEGE) under the exemption provisions of Indiana Code 22-9-2-3(h).

The aforesaid code provision expressly provides in material part that:

> * * the term "employer" does not include any non-for-profit corporation or association organized exclusively for * * religious purposes, nor any school, educational or charitable religious institution owned or conducted by or affiliated with, a church or religious institution, * * *.

Accordingly, THE CORPORATION OF SAINT MARY'S COLLEGE, NOTRE DAME, hereby requests the STATE OF INDIANA CIVIL RIGHTS COMMISSION to dismiss the above captioned discrimination complaints (Docket No. EMre 78020091).

. . . .

24th day of May, 1978.

S/ WILLIAM A. HICKEY, VICE PRESIDENT and DEAN OF FACULTY

S/ JASON D. LINDOWER, JR. CONTROLLER

APPENDIX Z/3

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

ANTHONY OSTRIC, Plaintiff, v. THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME, et al., Defendants.	)	Civil Action, File No. S79-0256 Filed: October 17, 1979

DEMAND FOR JUDGMENT BY DEFAULT /EXCERPTS/

1. Comes now Anthony Ostric, Plaintiff of the above entitled cause and respectfully requests that the Clerk of this Court enter a default against Defendants . . ./Administration and Faculty/ represented by Arthur A. May and Vincent P. Campiti under Federal Rules of Civil Procedure 54(c), 55(a)(b)(1), for the reason that the Defendants failed to answer to the Plaintiff's Complaint within 20 days of the Summons . . ..

2. .. . . Defendants were aware that (/un-

der/ Rule 55(a)(b)) by not answering timely to the Plaintiff's Complaint, either by their responsive pleading, or by a motion before responding to said Complaint within 20 days after the service of the latter and the Summons, "the clerk (upon request of the plaintiff. . .) shall enter his default. . ."

3. . . .neither of ... /said/ Defendants' legal representatives complied with Rule 5(a), /supra/ . . . requiring "every written motion . . ., and every written notice, appearance . . ./to/ be served upon each of the parties. . . .

4. Furthermore, said Defendants' "Motion To Dismiss". . . represents a nullity for several reasons, some of which are as follows:

(a) It was not filed timely, i.e. within 20 days after the service of the Summons and Complaint . . ..

(b) . . . .

(c) It was not made properly . . . ..

(d) The very content of said Motion and . . . Memorandum . . . consists not only of

scandalous, but fraudulent mispresentation of . . . Federal (Rules) of /Civil/ procedure as well particularly of /Rules/ 8(b) and 11.

(e) Had said legal representative . . . been . . . interested . . . in acting in conformity with the provisions of Rule 1. supra, i.e. in a way which would facilitate this Court "to secure the just, speedy, and inexpensive determination of every action . . .," including thg Plaintiff's /present/ legal action -- then . . . /he/ would /have/ acted quite differently; instead of his "Motion To Dismiss", he would have filed, timely, a Motion For More Definite Statement in which the counsel for the Defendants could "point out the /alleged/ defects complained of and the details desired," (in accordance with Rule 12(e), supra) .. . .

WHEREFORE, the Plaintiff prays as follows:

That Judgment by Default, by the Clerk, against said Defendants. . . be entered.

2. That said Defendants's Motion To Dismiss (Filed in this Court, 28-IX-1979) be recognized for what it is: a nullity.

3. That -- in the case this Court decides to set aside said entry of default by the Clerk -- said Defendants be (required) by this Court to serve upon /the/ Plaintiff . . . a properly prepared responsive pleading . . ..

4. . . . .

Respectfully submitted,

S/ ANTHONY OSTRIC

APPENDIX Z/4

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

ANTHONY OSTRIC, Plaintiff, v. THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME, et al., Defendants.	Civil Action File No. S79-0256 Filed: October 17, 1979

MEMORANDUM IN SUPPORT OF

DEMAND FOR JUDGMENT BY DEFAULT

/EXCERPTS/

. . . .

Despite the fact that the Plaintiff's Complaint is against multiple parties (with multiple representatives) and that said legal counsel (Vincent P. Campiti) appeared only for said Defendants, comprising only a part of all Defendants in the above entitled cause . . . said Defendants boldly, irresponsibly, improperly and not in good faith, "(moved) that plaintiff's complaint /i.e. . . . the whole com-

plaint be dismissed . . ."; they moved that this be done under Rules 8, 10 and 12, of which (as well as of other Rules referred to in their filings) the content and, consequently, their meaning were changed by said Defendants (or more correctly by their . . . counsel); they intentionally mispresented said Rules as the following will show:

(1) To show how, as they alleged, "the (Plaintiff's) Complaint is in direct violation of the Federal Rules of Civil Procedure," said Defendants — in their . . . "Memorandum In Support Of Motion To Dismiss" . . . — left out the . . . essential parts (of said Rules): . . . They cited, for example, (in the middle of page one of their "Memorandum") what, according to them "Rule 8(b) . . . provides in pertinent parts," yet the three (3) essential words are "conveniently" left out from the middle of what said Rule provides; these words are: "the substance of"; besides, the other very pertinent parts of . . . Rule 8(b) are equally "conveniently" omitted. To show the "pertinency" of the omitted parts by Defen-

dants, the Plaintiff decided to cite what Rule 8(b) provides in its entirety and to underline the parts omitted by Defendants (more correctly the counsel of the latter).

The Rule 8(b), supra provides:

"A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general subject to the obligations set forth in Rule 11."

(2) At the end of the omitted parts of just cited Rule 8(b), . . . reference is made also of Rules 11, supra, without citing at least the most pertinent parts of the very

pertinent Rule 11 /and without complying with it/, which are as follows:

> "The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not be served. For a willful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter in inserted." (Emphasis added.)

(3) To show how /as they alleged/ "the /Plaintiff's/ Complaint is in direct violation of the Rules of Civil Procedure. . .", said Defendants - in considering Rule 8(e), supra - cited conveniently (only) one sentence which they thought as being in favor of their argument against Plaintiff, while and equally conveniently, they left out what could weaken their argument. /The Defendants cited: "Each averment of a pleading shall be simple, concise and direct," while they omitted the other very pertinent parts of it which appeared to be very bothersome for them and with which

they decided not to comply; the omitted parts are:

> "(1).. . . No technical forms of pleading or motions are required.
> (2).. . . All Statements shall be made subject to the obligations set forth in Rule 11." (Emphasis added.)/

. . . .

. . . .

(5) In /the Defendants'/ said "Motion to Dismiss", it is stated that

> "The /Plaintiff's/ complaint is ... an incomprehensible, . . . pleading consisting of ..., immaterial, impertinent and scandalous matter . . . It is in violation of the Federal Rules of Civil Procedure and beneath the dignity of this Honorable Court." (Emphasis added.)

. . . .

It is evident that said quotation . . ./is/ (1) incongrous, (2) nonsensical, (3) . . . (without being supported by evidence); and because it is written by a legal counsel in a "Motion to Dismiss" it is (4) irresponsible and it represents an example of the violation of the Federal Rules of Civil Procedure. /It is so for the following reasons:/

(1) How can a reasonable, responsible law-

yer, state "that plaintiff's (entire) complaint is . . . incomprehensible, . . . /or, as characterized in said Defendants' 'Memorandum': 'so vague . . . that it defies any rational interpretation . . .'/ and /at the same time/ scandalous matter . . . beneath the dignity of this Honorable Court . . ."?! If the Plaintiff's Complaint were incomprehensible, i.e. beyond the powers of comprehension of the mind of said Defendants and their legal representatives, how could it be comprehended and determined and averred with such a certitude, as "consist/ing of . . ./ scandalous matter . . ."?!

. . . .

. . . .

(4) There could be no doubt that said Defendants and particularly their legal representatives are aware of how serious their said allegations . . . are . . ./when/ they declare the Plaintiff's Complaint as "consisting of scandalous matter . . . and beneath the dignity of this Honorable Court," Accord-

ing to Rule 11, supra, of which the provisions are cited already in this Plaintiff's "Memorandum" (on p. 3), the "scandalous or indecent matter" . . . /is/ consider/ed/ so serious that- according to the provisions of the same Rule -

> "...if scandalous or indecent matter is inserted (in a pleading, it may be stricken as sham and false and the action may proceed as though the pleading had not been served.)"(Emphasis added.) *

Said Defendants' legal repersentatives are aware of the provisions of Rule 9(b), supra, and of their very serious obligations to comply with /the above/ quoted provisions of Rule 11, as well as those of Rule 9 which are as follows:

> "In all averments of fraud or mistake, the circumstances constituting fraud or mistake /such as allegations of "scandalous or indecent matter" made by said Defendants and their legal representatives in said "Motion" and "Memorandum"/ shall be stated with particularity.. . ."

---

*The Defendants were also aware of the provision of Rule 8(d), supra, i.e. of the "Effect of Failure to Deny" and that, according to this Rule, "Averment in a pleading to which a responsive pleading is required /as in the instant case/, other than those as to amount of damage, are admitted when not denied in the responsive pleading.. . .." (Emphasis added.)

Said Defendants and their legal representatives being aware of the provisions of Rule/s/ 11 /and 12(f)/, supra, . . . and of the fact that all Plaintiff's pleadings in said Complaint . . . were declared (in an Affidavit accompanying said Plaintiff's Complaint) "under oath . . ./as/ true and correct and /that/ the presentation of the statement of the facts of the claim is made upon the Plaintiff's knowledge . . ."/;/ then what said Defendants could have easily and properly done, was to follow the Federal Rules of Civil Procedure, . . . and . . . "state with particularity (the circumstances constituting fraud or mistake /including perjury, scandalous matter .../)" and properly move under Rule/s/ 11 /and 12(f)/, supra, that this Court strike . . . /them as "scandalous matter"/ .. . ..

What said Defendants and their legal representatives had decided to do instead was to consider themselves above the laws and to proceed . . . /accordingly/ . . ..

. . . .

. . . .

What is stated in the Federal Rules Digest (Third Edition, pp. 368-369) related to Oldroy v. Kugler, 16 FR Serv 2d 182, 461F 2d 535 (Ca 3rd, 1972), is . . . applicable . . . /to the instant case/. /In the instant case, Motion to to Dismiss filed by Defendants Adminstration and Faculty is a filing -/

> "which /explicitly/ neither admitted nor denied /the averments stated in Petitioner's Complaint -/ . . . was in derogation of the Federal Rules which require cogent answer pertinently directed toward the allegations raised in a complaint.. . . The purpose of the Federal Rules has been to throw into discard the technicalities that acted as a brake on the progress of a lawsuit; to abolish what has been so aptly called the sporting theory of justice ; to provide sufficient machinery for the ascertainment of truth; and to expedite a determination of each controversy on the merit. Since the defendants' . . . /"Motion to Dismiss"/ treated the Rules with contempt and was frivolous, a motion by the plaintiff to dismiss . . . /Defendants' said "Motion to Dismiss" by declaring it a nullity/ would have been in order. Such an action would not forfend the defendants from filing a responsive answer should they desire to do so. Oldroy v. Kugler, 16 FR Serv 2d 182, 461F 2d 535)Ca 3rd, 1972) (emphasis added)."

APPENDIX 2/5

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

ANTHONY OSTRIC, Petitioner, v. HONORABLE ALLEN SHARP U.S. District Court, Northern District of Indiana, Respondent.	Cause No. 80-1541 Filed: September 11, 1980

PETITION FOR PROMPT DETERMINATION OF PETITIONER'S APPLICATION FOR WRIT

Comes now Anthony Ostric, Petitioner pro se above named, and respectfully petitions for a prompt determination for his Application For Writ docketed on April 23, 1980, the cause number indicated above.

In his aforesaid Application For Writ -- the Petitioner stated the legal grounds upon which it was made and several reasons for filing it.

. . . .

1. During the 140 days that followed the docketing of the aforesaid Application For

Writ in this Court, the United States District Court for the Northern District of Indiana took no proper step in exercising its jurisdiction in accordance with Federal Rules of Civil Procedure, "...to secure the just, speedy and inexpensive determination..." (See Rule 1, supra) of the Petitioner's Complaint (Cause No. S 79-0256) filed in the aforesaid Court (on August 31, 1979); this Court instead permitted the Honorable Gene D. Lee, United States Magistrate to violate laws and the Constitution of the United States, the Federal Rules of Civil Procedure and Federal Magistrate Act, 28 U.S.C., as well as the Rules of the aforesaid United States District Court as described in part in the OBJECTIONS TO MAGISTRATE'S CALLING OF "THE HEARINGS ON DEFENDANTS'S SEPARATE AND SEVERAL MOTIONS TO DISMISS" (with BRIEF IN SUPPORT) filed (August 22, 1980) by the Petitioner in the aforsaid United States District Court . . ..

. . . .

. . . .

3. Not only did the aforesaid Magistrate call — improperly and without jurisdiction — "The Hearings on Defendants' ... Motions to Dismiss", but he conducted them — equally without compliance with the aforementioned Rules — on August 19, 1980 . . . as the instant recordings in the Court (made officially by the Court, as well as privately for the Petitioner) could show, and the following will clearly demonstrate.

4. At the outset of the above said hearings, the aforesaid Magistrate stated that the aforesaid Defendants' Motions to Dismiss will be heard following the Order of December 3, 1979 by the Honorable Allen Sharp, Judge of the aforesaid United States District Court in accordance with Federal Magistrate Act § 636(b) and that there will be no rulings (by the Magistrate) but only recommendations and filings for consideration by the judge (in accordance) with §636(c) /sic/ of the Federal Magistrate Act . . ..

5. After the aforesaid opening statements by the aforesaid Magistrate, the Petitioner

requested permission to orally state his Objections to Magistrate's calling of said hearings and addressed them to the aforesaid Magistrate; the latter authorized it and the Petitioner expressed the aforesaid Objections and in particular cited § 636(b)(1) of the Federal Magistrate Act, which explicitly provides:

> "Notwithstanding any provisions of law to the contrary —
> (A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for judgment on the pleadings, to dismiss . . ., to dismiss for failure to state claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this paragraph (A) where it has been shown that magistrate's order is clearly erroneous or contrary to law." (Emphasis added.)

§ 636(c) Of the Federal Magistrate Act provides:

> "Notwithstanding any provisions of law to the contrary —
> (1) Upon the consent of the parties, a full-time United States magistrate or a part-time magistrate who serves as a full-time judicial officer may conduct all proceedings in a jury or nonjury civil matter . . . .
> (2) If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk

of court shall, at the time of the action is filed, notify the parties of their right to consent to the exercise of such jurisdiction...." (Emphasis added)

Furthermore, during the course of the presentation of said Objections, the Petitioner informed the Magistrate that the Clerk of the aforesaid United States District Court notified all parties in the above entitled cause "of their right to consent to the exercise of such jurisdiction..." as provided in the just cited paragraph of the Federal Magistrates Act of 1979 and that the Petitioner signed his "Refusal To Consent"; therefore, contrary to the decision of the aforesaid Magistrate, the latter could not be designated to conduct the aforesaid "Hearings on Defendants' ... Motions To Dismiss" either under § 636(b)(1)(2), or under § 636(c)(1)(2) of the Federal Magistrates Act of 1979.

6. Because of all that, the Petitioner moved that the aforesaid Hearings called by aforesaid Magistrate be halted because of lack of jurisdiction. The latter declared the Petitioner's aforesaid motion: "Heard and over-

ruled" and continued in conducting the "Hearings on Defendants' ... Motions To Dismiss."

7. Furthermore, as it was the case of the handling of the Petitioner's "within case" submitted by the Order (entered 12/3/1979) of the aforesaid Judge of the United States District Court to the aforesaid Magistrate, the latter conducted these "hearings" not only in complete disregard for the Federal Rules of Civil Procedure and Rules of said Court, but also for the Code of Judicial Conduct, and in particular its Canons 1, 2 and 3.

. . . .

During the course of the aforesaid hearings, as well as before, the Magistrate permitted the Defendants' legal representatives to conduct themselves not as attorneys who follow the "Cath of Attorney" . . . ..

. . . .

8. The following facts describing the conduct of the aforesaid Magistrate and the Defendants' legal representatives during the course of the aforesaid "hearings" will further evidence pf previously characterized

improper conduct by both the Magistrate and Defendants' legal representatives.

(a) Three new legal representatives completely unknown to the Petitioner, whose Appearance/s/ were neither filed in the court nor served to the Petitioner, appeared at different periods of time during aforesaid "hearings", standing for Mr. R. Kent Rowe /Attorney for Defendants Lawyers/, one of the Defendants' Attorneys: first came R.K. Rowe, Jr. and (presentéd) himself to the Magistrate "as observer" only, then sometime in the middle of the "hearings", after the latter left, another attorney (Mr. L. Laderer ?) substituted for R.K. Rowe and presented for the latter the second "Motion to Dismiss" prepared and filed in aforesaid United States District Court by R. Kent Rowe for . . . Defendants /Lawyers/; after the second attorney (Laderer ?) left, while the Petitioner was responding to the latter's presentation, the third attorney entered in the Court, the third substitute for R.K. Rowe.

(b) One of . . . legal representatives

(/for/ Defendants /Public Officials/), Robert F. Colker, Assistant Attorney General, took an arrogant attitude, he used. . . offensive language with insinuation and innuendo to humiliate the Petitioner, alleging, among other things, that the latter, in his aforesaid Comlaint, went after Defendant Montgomery, Judge of the Circuit Court (in South Bend) with vindication because of the Judge's Judgment against Petitioner; after that, the Petitioner stated his objection that this is a serious averment without evidence, and the Magistrate "overruled" the Petitioner's objection.

(c) During his presentation of the second "Motion To Dismiss", prepared and filed for his clients (. . . Defendants /Lawyers/) by R. Kent Rowe, the second attorney (Laderer ?) standing for the latter contended that the Petitioner -- . . . who studied the letter of the Federal Rules of Civil Procedure -- does not understand the spirit (meaning) of these Rules; yet this Country is one of Rules which should be obeyed. Following that, the Petitioner responded by stating that neither R. Kent Rowe

nor his clients (second group of Defendants) showed a great respect for this Country's Rules: to the contrary, they showed their contemptuous disregard for this Country's Rules (in particular its Federal Rules of Civil Procedure); they did it by filing their "Motion To Dismiss", a dilatory plea, a nullity for several reasons: it was not properly made; it was filed untimely; said Defendants (represented by R. Kent Rowe) requested and obtained from the aforementioned United States District Court an extension of time to file their Responsive pleading; they waited 8 days after the expiration of the extended time to file, not their responsive pleading, but the aforesaid "Motion to Dismiss", a dilatory and invalid filing. After saying that, while he intended to present further reasons for which the aforesaid "Motion To Dismiss" is invalid, the Petitioner was interrupted by the aforesaid Magistrate; the latter asked the Petitioner: "What is the consequence of their filing /such/ "Motion To Dismiss" /8 days later/? What is the significance /of it/? What is the sanction?"

The Petitioner responded by saying that this kind of action by the aforesaid Defendants' legal representatives. . ./shows/ dilatoriness prejudicial to the Petitioner; then, the latter presented the other reasons showing why the aforesaid "Motion To Dismiss" is invalid.... ..

(d) During his response to V.C. Campiti's very brief "presentation" of the "Motion To Dismiss" prepared and filed by him and Arthur A. May for. . . Defendants /Administration and Faculty/, the Petitioner referred to and re-stated a part of the content of his DEMAND FOR JUDGMENT BY DEFAULT (in particular, §§ 4 (a), 5 and 8) filed (October 17, 1979) against . . . /this/ group of Defendants . . .; among other things, the Petitioner restated that the Clerk of the aforementioned United States District Court <u>did not enter Judgment By Default</u>; besides, the aforesaid Clerk made an <u>erroneous statement</u> about it in the folio of the docket sheet (statement prejudicial to the Petitioner): "Clerk's judgment /by default/ not entered because <u>responsive pleading</u> /of Defendants/ <u>already on file</u> (...)." (Emphasis

added); yet the Clerk knew that no "responsive pleading" was either filed by any of the Defendants, or entered in the folio of the docket sheet! Because a motion (of any kind) even properly made and timely filed (including a "Motion To Dismiss") is not a "responsive pleading". After/ward/ . . ., the aforesaid Assistant Attorney General of the State of Indiana interrupted him /and contradicted the latter/ with . . . clear consentment (approval) of the aforesaid Magistrate, and without any dissenting voice on the part of the other attorneys) – by pointing his finger repeatedly at the Petitioner – vehemently expressed his disagreement with the Petitioner's statement . . . /which also maintained that a/ . . . Motion to Dismiss (or any kind of Motion) could not be considered a "Responsive pleading"; and /this Assistant Attorney General/ asked (requested) equally vehemently /that/ the Petitioner . . . /cite/ the authorities (cases) "in support of his statement that a motion to dismiss is not a responsive pleadind"! Flabbergusted by this . . . court's atmo-

sphere and the displaying of such artifice of ignorance of the Federal Rules of Civil Procedure (law of federal courts) by the experts of law and legal procedure — the Petitioner became convinced that such . . . could only represent a trick or means used by the aforesaid legal experts to confuse (mislead) the Petitioner /a lay in matters of law/. To every person - even a non-lawyer capable of reading the Federal Rules of Civil Procedure - this becomes obvious (See in particular Rules 15(a); 7(a)(b)(1); 8(b)(d); and 12(a)(b)(e)(f), supra; see also Wright, Charles Alan, Law of Federal Courts, (1976), § 66, pp. 308-317; and Emmanuel, Steven, Civil Procedure, 1978, (ch.) VIII, p. 118). For this reason, the Petitioner decided only to respond to the aforesaid Assistant Attorney General and Magistrate that there . . . /was/ no need for such requested "authorities (cases)" because this . . . /was/ obvious from what the Federal Rules of Civil Procedure . . . (provide).. . ..

(e) During /the giving of/ this response,

the aforesaid Magistrate interrupted the Petitioner by /simply/ leaving the Court-room without expressly stating anything about the nature of the ending of the aforesaid "hearings", i.e. /without declaring whether they were/ . . . terminated, adjourned, cancelled or recessed even though the Petitioner asked him . . ..

For all these reasons, and for those presented in the aforesaid APPLICATION FOR WRIT, the Petitioner respectfully prays the Court to provide a prompt determination of the aforesaid APPLICATION FOR WRIT.

Respectfully submitted

S/ ANTHONY OSTRIC, PRO SE

APPENDIX Z/6

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

ANTHONY OSTRIC, Plaintiff, v. THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME, et al., Defendants.	Civil Cause No. S79-0256 Filed: December 31, 1981

MOTION FOR RELIEF FROM JUDGMENT AND ORDER, BOTH DATED DECEMBER 7, 1981

/EXCERPTS/

Comes now . . ., Plaintiff, pro se, and - Pursuant to Rules 60(b)(3), 60(b)(4) and 60(b)(6), as well as Rule 1, of the Federal Rules of Civil Procedure - files this Motion and respectfully moves that . . . /the Trial/ Court grant . . . /him/ relief from its judgment contained in its final Order and final Judgment entered, both December 7, 1981, by

declaring this Order and this Judgment null and void for the following reasons:

1. The . . . /Trial/ Court committed a serious error in not giving due consideration either to (a) the history of the Plaintiff presented in his Complaint (SS 13-24), or (b) the sequence of events which transpired and led to litigation in the case (Id. SS 25-152), or (c) statement of closely interrelated claims stemming from the same civil conspiracy engaged in by all Defendants (Id. SS 3-12); each of these parts of the Complaint mentioned (under (a) (b) (c) taken separately as well as a whole) is critical to the understanding of this case.

. . . .

. . . .

9. The . . . /Trial/ Court made a manifest serious error, exercised abuse of discretion and manifest disregard for law and judicial process by failing to adhere to proper procedure (a) in considering the /aforementioned/ "Motion for Judgment on the Plead-

ings for Failure to State a Claim Upon Which Relief can be made" filed (November 25, 1981) by . . . Defendants as a bona fide motion, properly made . . . and consequently, a part of the record upon which the Court based its latest decisions (Order and Judgment), and at the same time, (b) in preventing the Plaintiff from filing an answer within "fifteen (15) days after service of . . . /said Motion which the Plaintiff received November 27, 1981/ to file an answer . . ." in accordance with Rule 7(b) of the Rules of . . . /said District/ Court and F.R.C.P. 7(a) and (b); the . . . /Trial/ Court (c) rendered any such timely filed answer by the Plaintiff "clearly moot" by its "enter/ing/ a final /O/rder of Dismissal" /App. C, in Appendices, I., pp. 24a-25a/ and a final judgment by which the Plaintiff's "case is dismissed," /App. C, id., pp. 53a-54a/ entered both with precipitation, on December 7, 1981, i.e. twelve (12) days following the filing of the Defendants' said Motion - without /rendering possible/ any

answer on the part of the Plaintiff - and only three (3) days after filing (December 2, 1981) of the Plaintiff's "Motion For Reversal or Amendment of the Court's Order of November 24, 1981"; the latter were not even considered by the Court or answered by Defendants. Yet, the Plaintiff had prepared his Answer to the Defendants' said Motion to be filed in compliance with said Rules of Procedure showing already then . . . that the Defendants' said Motion represents an unlawful filing which is neither in compliance with the Federal Rules of Civil Procedure, nor with the Rules of this Court, but constitutes a "malicious abuse of legal process.. . ." within the meaning provided by Black's Law Dictionary (Fifth Edition, 1979). /Pp.,1-3/

BRIEF IN SUPPORT

. . . .

3.. . . .

That this /Trial/ Court's entries of the findings and conclusions, as well as of determination-decisions-denials-dismissals and

orders as shown by said MEMORANDUM AND ORDER and ORDER (entered in a joint document on March 3, 1981) are all not only manifestly erroneous, but also contrary to reason, or clearly against logic and not justified by evidence; in other words, they represent (exemplify) this Court's abuse of discretion.

The /Trial/ Court's abuse of discretion is illustrated in the Honorable Judge Sharp's MEMORANDUM AND ORDER and ORDER . . . /App. F, in Appendices, I., pp. 33a-34a/

(1) By accepting the Magistrate's erroneous reference to section 636(b) and 636(c), as the legal ground authorizing him to handle, as he did, the Plaintiff's "within case";

(2) By flagrant inconsistency deriving from this Court's incompatible statements regarding the Magistrate's "Report" by saying . . . on one hand that the Magistrate's "conclusions of law are correct in all respects and that the recommendations are appropriate.. . . /and/ /t/herefore confirm/ed/ and adopt/ed/ as those of the Court /id./," as the Magistrate stated /App. W, id., p. 70a/, "pursuant to

§ 636(b) of the /aforesaid/ Magistrate Act and in conformity with § 636(c) of said Act /cf. App. F, in Appendices, I., pp. 33a-34 a/" and then . . . on the other hand, as this Court declared that it would be "28 U.S. C. § 636(b)(1) (Supp. 1980). See Mathews v. Weber, 423 U.S. 261, 270-271, 96 S. Ct. 549, 46 L. Ed. 2d 483 (1976)," which /would/ authorize/-/ the procedure followed by the Magistrate /App. F. id., p. 33a /.. . .

(3) By citing . . . the United States Supreme Court's decision in Mathews v. Weber, . . . /id./, even though the Court must know that the decision does not bear on this case. The Plaintiff presented in his aforesaid pleadings /particularly in his Motion For Relief From Judgment, NR. 31, filed April 4, 1981/ numerous facts showing the invalidity of the Defendants' said Motions to Dismiss /see App. Z/3, ib., pp. 139 a-142a; App. Z/4. id., pp. 143a-151a/. Assuming arguendo, that the Plaintiff does not have facts in support of his assertions regarding the invalidity of the Defendants' said Motions to Dismiss, the Hon-

orable Judge Allen Sharp's MEMORANDUM AND ORDER contains still another erroneous conclusion that is clearly against logic and the natural inference to be drawn therefrom.

First, in his MEMORANDUM AND ORDER, . . . the Honorable Judge stated:

> "The Court finds that the Magistrate's proposed conclusions of law are correct in all respects and that the recommendations are appropriate. Therefore the Court now confirms and adopts the Magistrate's conclusions as those of the Court." (Emphasis added.) /App. F, in Appendices, I., p. 34a/

The Honorable Judge's conclusion was based on the Magistrate's conclusion; the Magistrate's conclusion was based on the allegations made by said Defendants in their Motion to Dismiss. Two groups of Defendants: (1) Administration and Faculty and (2) Lawyers are in agreement concerning the alleged "invalidity" of the Plaintiff's Complaint expressed in Defendants Administration and Faculty's "Motion to Dismiss" in which they moved

> "that plaintiff's complaint be dismissed under Rules 8, 10 and 12 on the ground that the complaint is basically an incomprehensible, lengthy, unclear, rambling pleading consisting of redundant, immaterial, impertinent and scandalous

> matter. It is in violation of the Federal Rules of Civil Procedure and beneath the dignity of the Honorable Court." (Emphasis added.)

In their "Motion to Dismiss" the Defendants Lawyers declared the Plaintiff's Complaint "unintelligible." /Yet/ In his aforesaid "report", said Magistrate /after having read and comprehended the Plaintiff's Complaint/ made his recommendation to this Court that those Defendants' requests be granted and that the Judge grant the Lawyers' Motion to Dismiss, but only in part: the Defendants' Administration and Faculty's Motion to Dismiss. And the Judge did so. Thus the Honorable Judge, in denying /even/ in part one of the "Motions to Dismiss", by this very fact contradicts the statements (claims) made by said Defendants that the Plaintiff's Complaint is "incomprehensible" or "unintelligible". In his turn, the Magistrate's "recommendations", based on his analysis of the Plaintiff's Complaint, presented in his said "Report" to this Court which is extended more than 12 (legal) pages, by themselves contradict clearly the

Defendants' basic allegations that the Plaintiff's Complaint is "unintelligible" and "incomprehensible". By these findings and conclusions contained in said MEMORANDUM AND ORDER and this Court's determination-decisions-denials-orders / made despite these manifest contradictions or inconsistencies/ contained in said ORDER, this Honorable Court exercised an abuse of discretion against the Plaintiff regarding also the validity of the Defendants' Motion to Dismiss. In addition, there is manifest internal incongruity or violation of logical principles within said Motion to Dismiss: how could the Plaintiff's Complaint be - as the Defendants alleged - at the same time "incomprehensible or unintelligible" and consist of "immaterial, impertinent . . . and scandalous matter"? Thus the Court also demonstrated that the Defendants' Motions to Dismiss are "sham and false, and the action may proceed as though the pleading had not been served" (Federal Rule of Civil Procedure 11). Yet this Court dismissed the Plaintiff's Com-

plaint and granted these Motions even though it should have judicially noticed, before having been shown by the Plaintiff in said Motion for Relief from Judgment /NR. 31; see also App. Z/3-Z/4, in Appendices, I., pp. 139a-151a/, that these "Motions" are sham and false and that the Court's above described erroneous findings and conclusions and its determination-decisions-dismissals and orders are clearly against reason and evidence (facts), which can be easily concluded by everyone else including a legal layman such as the Plaintiff. The Court's refusal to take judicial notice of it after having been requested to do so by the Plaintiff in said Motion for Relief from Judgment could only be understood as this . . . /Trial/ Court's failure in its obligations toward the Plaintiff and toward justice.

4. /In addition/ /a/s already shown, the /entire/ record upon which this /Trial/ Court /should have/ based its determination-decisions-denials- dismissals and orders is replete with

manifest serious errors and omissions which prevented the true facts of this case from being considered by the Court. These include both erroneous documents in the record as well as differential discriminatory treatment of the Plaintiff by this Court.

. . . .

The record of . . . /the instant/ case also contains a materially <u>false and fraudulent</u> affidavit /App. Z/2, in <u>Appendices</u>, I., pp.136 a-138a; see also App. Z, id. pp.125 a-129a/ signed by Defendants William Hickey and Jason Lindower, and prepared by Defendant Frederick Thornburg (as quoted in the Plaintiff's Complaint, ~~SS~~ 109-110, pp. 43-44). While it was stated in said affidavit (pp. 1-2) that "SAINT MARY'S COLLEGE is an Indiana Not-For-Profit Corporation <u>organized</u> for religious and educational purposes and is . . . <u>owned and conducted</u> by a religious institution, the SISTERS OF THE HOLY CROSS . . .," in order to remove the Plaintiff's Complaint from the jurisdiction of the ICRC, <u>this in fact is not</u>

true and it represents a perjurous statement as the Articles of the Incorporation of St. Mary's College, Notre Dame /App. I*, in Appendices, II., pp.218 a-223a/, show clearly . . .. A copy of the latter is filed with this Court. It is rather an independent Corporation formed as a "self perpetuating body. . ." (Emphasis added.) It remains so despite what the aforesaid Defendants-Affiants stated in said affidavit: "that . . . /said/ Corporation . . . has been and is currently recognized by the Internal Revenue Service as a tax exempt religious, educational, charitable organization under Section 501(c) of the Internal Revenue Code . . .." The fact is that this Corporation (1) was neither "organized for religious purposes . . ." (2) nor "owned and conducted by a religious institution, the SISTERS OF THE HOLY CROSS . . .", The import of these statements is clear. At some point gross misstatements have been made with the intent to deceive the ICRC and earlier the IRS /App. Z, in Appendices, I., pp. 127 a-128a/.

The interest of fundamental justice should not permit the Court to ignore these misstatements. Only a full hearing of evidence and trial (by jury, as the Plaintiff demanded) on the merits will clear the air on this point. /Pp. 12-14/

. . . .

6. There could be no doubt that the Defendants designed their aforesaid "Motion for Judgment on the Pleadings . . .." as a . . . booby trap or snare . . .. /B/y their said Motion, the Defendants and their attorneys engaged themselves in a malicious act, or more precisely, the Defendants' said action constitutes "malicious abuse of legal process," i.e.

> "Willfully misapplying court process to obtain object not intended by law.. . . /;or/ the perversion of court process to accomplish some end which the process was not designed to accomplish . . .. Capital Elec. Co. v Cristaldi, D.C. Md. 157 F. Supp. 646, 648 (Cited by Black's Law Dict. 1979 ed.)"

That the aforementioned is true, that which follows will show.. . .

. . . The Defendants filed said Motion

"pursuant to Rule 12(c) and (h) F.R.C.P." and made the above stated request even though their attorney was well aware before filing said Motion that, at . . . /that time and/ state of the pleadings in . . . /the instant/ case, Rule 12(c) and (h) could not serve as legal grounds for filing the Defendants' said Motion. Rule 12(c) supra, . . . states:

> "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.. . ." (Emphasis added.)

Rule 12(h)(2) states:

> "A defense of failure to state a claim upon which relief can be granted . . . may be made /only/ in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleading . . ." (Emphasis added.)

The Defendants know and . . . /Trial/ Court is aware that - at . . . /that/ state of pleadings in this case - they could not properly submit "/a/ defense of failure to state a claim upon which relief can be granted . . . by motion for judgment on the pleadings . . .." because it would be neither "permitted" nor "ordered" under Rule 7(a); they did not file

their responsive pleading; all their actions by commission and omission were done so "as to delay the trial." The Defendants surely realize that their answer (responsive pleading) is necessary in order to consider the "pleadings closed" because

> "Rule 7(a) provides that the pleadings are closed /only/ upon the filing of a complaint and answer . . . . /And/ since plaintiff /also/ cannot move under Rule 12(c) until after an answer has been filed, the proper course for plaintiff in a case in which defendant fails to answer is to move for a default judgment under Rule 55 rather than seek a judgment on the pleadings. Similarly, defendant may not move under Rule 12(c) until after he has answered." (Wright, Charles Allan and Arthur R. Miller, Federal Practice and Procedure, vol. 5, 1969, § 1367, p. 687) (Emphasis added and citations omitted.) (See also, Emmanuel, Steven, Civil Procedure, 1978, pp. 113-114) /Pp. 16-17/

The Defendants must also know, concerning practice under Rule 12(c) that - had they even filed their responsive pleading -

> "The federal courts have followed a fairly restrictive standard in ruling on motions for judgment on the pleadings. Although the motion may be helpful in disposing of case in which there is no substantive dispute that warrants proceeding further, . . . hasty or imprudent use of this summary procedure by the Courts violates the policy in

favor of ensuring to each litigant a full and fair hearing on the merits of his claim. The importance of this policy had made federal judges unwilling to grant a motion under Rule 12(c) unless the movant clearly establishes that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law. In considering a motion for judgment on the pleading, the trial court is required to view the facts presented in the pleadings and the inferences to be drawn therefrom in the light most favorable to the nonmoving party / i.e. in this case "most favorable" to the . . . /Petitioner/. In this fashion the courts hope to insure that the rights for the nonmoving party are decided as fully and fairly on a Rule 12(c) motion, as if there has been a trial.

For the purpose of the court's consideration, all of the well pleaded factual allegations in the adversary pleadings /in this case, in the . . . /Petitioner's/ pleadings/ are assumed to be true and all contravening assertions in the movant's /in this case, Defendants'/ pleadings are taken to be false.. . . (Emphasis added and citations omitted.) (Wright & Miller, Federal Practice and Procedure, vol. 5, 1969, §§ 1368-1369, pp. 689-700.)

APPENDIX A*

United States Constitutional Provisions

Art. I, sec. cl. 1:

No state shall . . . pass any Law impairing the Obligation of Contracts . . ..

Art. III, sec. 2:

The judicial Power shall extend to all Cases, in Law and Equity, arising under the Constitution, the Laws of the United States. . . ..

Art. IV, sec. 2:

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amend. V:

No person shall . . . . be deprived of life, liberty, or property, without due process of law . . ..

Amend. VII:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amend. XIV, sec. 1:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX B*

Civil Rights Act Of 1964, § 701 et seq. as amended 42 U.S.C. § 2000e et seq.: Sec. 703(a)(1) and 703(a)(2) provide in relevant part:

(a) It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin; or

(2) to limit, . . . or classify his employees or applicants_for_employment /these three words are italicized/ in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Sec. 704(a) provides in relevant part:

It shall be an unlawful practice for an

employer to discriminate against any of his employees or applicants for employment, . . . or . . .against any individual . . . because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this title.

42 U.S.C. §§ 2000e-2.(a)(1) and 2000e-2.(a)(2) provide in relevant part the same as Sec. 703 (a)(1) and 703(a)(2) supra.

42 U.S.C. § 2000e-3 provides in relevant part the same as § 704(a).

APPENDIX C *

"Civil Rights," 42 U.S.C. §§ 1983, 1985, 1986 and 1988:

42 U.S.C. §§ 1983, 1985, 1986 and 1988 provide in relevant part:

§ 1983. Civil actions for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, . . . of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

. . . .

§ 1985. Conspiracy to interfere with civil rights

. . . .

(b) Obstructing justice . . . .

/O/r if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course

of justice in any State . . . with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(c) Depriving persons of rights and privileges

If two or more persons in any State . . . conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State . . . from giving or securing to all persons within such State . . . the equal protection of the laws, . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, where-

by another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for recovery of damages occasioned by such injury or deprivation, against any one or more conspirators.

§ 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action . . .. But no action under

the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

§ 1988. Proceedings in vindication of civil rights; attorney's fees

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jirisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the

Constitution and laws of the United States, shall be extented to and govern the said courts in the trial and disposition of the cause . . .. In any case or proceeding to enforce a provision of sections 1981, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 /20 U.S.C. 1681 et seq./ . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

APPENDIX D*

Age Discrimination in Employment Act of 1967:

Sec. 623(a) provides in relevant part:

(a) It shall be unlawful for employer-

(1) to fail or refuse to hire . . . any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's age;

(2) to limit, . . . or classify his employees in any way which deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age;

(Emphasis added.)

APPENDIX E*

Indiana Civil Rights Law — IC 1971, 22-9-1 /22-9-1-1—22-9-1-12/:

Sec. 22-9-1-2 provides in relevant part:

. . . .

(b) The practice of denying these rights to properly qualified persons by reason of . . . religion . . . national origin or ancestry of such person is contrary to the principles of freedom and equality of opportunity and is a burden to the objectives of the public policy of this state and shall be considered as discriminatory practices. The promotion of equal opportunity without regard to . . . religion, . . . national origin or ancestry through reasonable methods is the purpose of this chapter /22-9-1-1—22-9-1-13/.

Sec. 22-9-1-3 provides in relevant part:

(a) The term "person" means one or more individuals . . . corporations . . . and the other organized groups of persons.

. . . .

(e) The term "commission attorney" means

the deputy attorney general, or such assistants of the attorney general as may be assigned to the commission, or such other attorney as may be engaged by the commission.

. . . .

(h) The term "employer" means the state, or any political or civil subdivision thereof, and any person employing six (6) or more persons within the state; except that the term "employer" does not include any not-for-profit corporation or association organized exclusively for fraternal or religious purposes, nor any school, educational or charitable religious institution owned or conducted by, or affiliated with, a church or religious institution . . ..

. . . .

(l) The term "discriminatory practice" means the exclusion of a person, from equal opportunities because of . . . religion, . . . national origin or ancestry; or a system which excludes persons from equal opportunities because of . . . religion, . . . national or-

igin or ancestry . . .. Every discriminatory practice relating to the . . . employment . . shall be considered unlawful unless it is specifically exempted by this chapter.

Sec. 22-9-1-4 provides in relevent part:

(a) There is hereby created a civil rights commission composed of seven (7) members . . ..

(b) It is expressly recognized that the commission is an "agency" within the meaning of the term as used in IC 1971, 4-22-1 /4-22-1-1—4-22-1-30/ as the same may hereafter be amended.

(c) . . . . Members of the commission may be removed by the governor for cause but for no other reason.

Sec. 22-9-1-6 provides in relevant part:

The commission shall have the following powers and duties:

. . . .

(b) To appoint such attorneys, and other employees and agents as it may deem necessary . . .. All such employees, with the exception of the executive director, and attorneys,

shall be appointed by the commission . . ..

(c) To adopt, promulgate, amend and rescind such rules and regulations, procedural and substantive, as are consistent with the provisions of this chapter /22-9-1-1--22-9-1-13/ or its intent and purpose as the commission may deem necessary. Such rules and regulations shall be adopted in accordance with the provisions of IC 1971, 4-22-2 /4=22-2-1--4-22-2-11/ as it may hereafter be amended.

. . . .

(e) To receive and investigate complaints alleging discriminatory practices.. . . All investigations of complaints shall be conducted by staff members of the Indiana civil rights commission or their agents.

. . . .

(i) To prevent any person from discharging, expelling or otherwise discriminating against any other persons because he filed a complaint . . ..

(j)(1) To hold hearings, subpoena witnesses, . . . and require the production for examina-

tion of any books and papers relating to any matter under investigation or in question before the commission.. . . Contumacy or refusal to obey a subpoena issued pursuant to this section shall constitute a contempt.. . . A citation of contempt may be issued upon application by the commission to the circuit or superior court, or judge thereof, in the county in which the hearing is held or in which the witness resides or transacts business.

(j)(2) To appoint hearing officers, other than commissioners, when such an appointment is deemed necessary by a majority of the commission. The hearing officers shall be members in good standing before the bar of Indiana and shall be appointed by the chairman of the commission. A hearing officer appointed pursuant to this subsection shall have the same powers and duties as a commissioner sitting as a hearing officer. However, he shall not have the power to issue subpoenas.

(k)(1) To state its findings of fact after a hearing and, if the commission finds a per-

son has engaged in an unlawful discriminatory practice, it may cause to be served on such person an order requiring such person to cease and desist from the unlawful discriminatory practice and requiring such person to take further affirmative action as will affectuate the purposes of this chapter, including but not limited to the power to restore complainant's losses incurred as a result of discriminatory treatment, as the commission may deem necessary to assure justice . . ..

(k)(2) Judicial review of such cease and desist order and other affirmative action as referred to in this chapter may be obtained in accordance with the provisions of IC 1971, 4-22-1 /4-22-1-1—4-22-1-30/ as amended.. . .

(k)(3) If, upon all the evidence, the commission shall find a person has not engaged in any such unlawful practice or violation of IC 1971, 22-9-1, the commission shall state its findings of facts and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such person.

(1) To furnish technical assistance requested by persons subject to IC 1971, 22-9-1 to further compliance with IC 1971, 22-9-1 or with an order issued thereunder. Sec. 22-9-1-8 provides in relevant part:

/T/he governor shall select and appoint a director who shall be secretary of the commission and chief administrative officer for the commission. The director shall devote his entire time and effort to the administration of the provisions of this act and shall not engage in or have any interest in any business or activity which may create a conflict of interest.. . .

APPENDIX F*

FEDERAL MAGISTRATE ACT OF 1979

28 U.S.C. § 636(b)(1), § 636(b)(2), § 636(b)(3) and § 636(b)(4) provide in relevant part:

(b)(1) Notwithstanding any provisions to the contrary -

(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion . . . for summary judgment, . . . to dismiss for failure to state a claim upon which relief can be granted . . .. A judge of court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition by a judge of the court, of any motion excepted in subparagraph (A), of applications for

posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

. . . . . .

(2) A judge may designate a magistrate to serve as a special master . . . in any civil case upon consent of the parties, without regard to the provisions of rule 53(b) of the Federal Rules of Civil Procedure for the United States district courts.

(3) A magistrate may be assigned such additional duties as are not inconsistent with the Constitution and Laws of the United States.

(4) Each district court shall establish rules pursuant to which the magistrate shall discharge their duties.

28 U.S.C. § 636(c)(1), § 636(c)(2), § 636(c)(3), § 636(c)(4), § 636(c)(5), § 636(c)(6), and § 636(c)(7) provide in relevant part:

(c) Notwithstanding any provisions of law to the contrary -

(1) Upon the consent of the parties, a full-time United States magistrate who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. . . . When there is more than a judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.

(2) If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of their right to consent to the exercise of such jurisdiction.. . .

(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection an aggrieved party may appeal directly to

the appropriate United States court of appeals from the judgment of the magistrate in the same manner as an appeal from any other judgment of a district court. In this circumstance the consent of the parties allows a magistrate designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

(4) Notwithstanding the provisions of paragraph (3) of this subsection at the time of reference to a magistrate, the parties may further consent to appeal on the record to a judge of the district court in the same manner as on an appeal from a judgment of the district court to a court of appeals. Wherever possible the local rules of the district court and the rules

promulgated by the conference shall endeavor to make appeal expeditious and inexpensive. The district court may affirm, reverse, modify or remand the magistrate's judgment.

(5) Cases in the district court under paragraph (4) of this subsection may be reviewed by the appropriate United States court of appeals upon petition for leave to appeal by a party stating specific objections to the judgment. Nothing in this paragraph shall be construed to be a limitation on any party's right to seek review by the Supreme Court of the United States.

APPENDIX G*

MAGISTRATES RULES OF THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA

Rules M-1, M-2, M-3, M-4 and M-6 provide in relevant part:

M-1 DUTIES UNDER 28 U.S.C. § 636(a)

Each United States Magistrate appointed by this court is authorized to perform the duties prescribed by U.S.C. § 636(a) . . . .

M-2 NONDISPOSITIVE PRETRIAL MATTERS

(a) In accordance with 28 U.S.C. § 636(b)(1)(A), a magistrate may hear and determine any pretrial motion or other pretrial matter, other than those motions specified in Rule M-3, infra.

. . . .

M-3 DISPOSITIVE PRETRIAL MOTIONS AND PRISONERS CASES

(a) In accordance with 28 U.S.C. § 636(b)(1)(B) and (c), a magistrate may hear, conduct such evidentiary hearings as are necessary or appropriate, and submit to a judge proposed findings of fact and recommendations for the

disposition of: . . . (3) motions . . . for summary judgment, . . . to dismiss for failure to state a claim upon which relief may be granted, . . . and for review of default judgment.

. . . .

M-4 SPECIAL MASTER REFERENCES AND TRIALS BY CONSENT

(a) A magistrate may serve as a special master subject to the procedures and limitations of 28 U.S.C. § 636(b)(2) and Rule 53 of the Federal Rules of Civil Procedure.

(b) Where the parties consent, a magistrate may serve as a special master in any civil case without regard to the provisions of Rule 53(b) of the Federal Rules of Civil Procedure and try the issues of any civil case. The entry of final judgment in any civil case, however, shall be made by a judge of the court or at the direction of a judge.

. . . .

M-6 ASSIGNMENT OF DUTIES TO MAGISTRATES

A magistrate may perform the duties author-

ized by 28 U.S.C. § 636)b) and Rule M-2 through M-5, supra, upon specific designation by a judge of the court or pursuant to a general order of the court assigning duties./under Rules M-1 and M-5, supra/ .. . .

APPENDIX H*

Administrative Adjudication Act — IC 1971, 4-22-1 /4-22-1-1--4-22-1-30/

Sec. 4-22-1-2 provides in relevant part:

With respect to any matters involving taxpayers' objections . . . the taxpayer may . . . file a petition with the circuit or superior court of the county in which he resides. . . . . for transfer thereto of any matter together with his complaint and shall serve summons as required by law. Any such court with which such petition for transferal and complaint is filed is hereby vested with jurisdiction thereof and upon the filing of the petition and complaint shall require an answer thereto by the adverse party. Upon the closing of the issue, the court shall set the matter for hearing and conduct a hearing on said petition and complaint . . . as in civil cases . . . .

Sec. 4-22-1-6 provides in relevant part:

In all cases in which the agency is the moving party it shall give at least five (5) days' notice in writing by registered or

certified mail with return receipt, addressed to the person or persons against whom an order or determination may be made . . . . which notice shall set forth therein a sufficient statement of the matters of fact or law to advise such person of the matters in issue and to be heard or determined by said agency . . ..

Sec. 4-22-1-7 provides in relevant part:

Every hearing held by an agency where an order may be made or determination had against any person the same shall be by ultimate authority of the agency except as herein otherwise provided. No evidence shall be received except upon reasonable opportunity for all persons to be present.. . .

Sec. 4-22-1-8 provides in relevant part:

Such agency is hereby authorized to conduct such hearing in an informal manner . . . and such manner of proof and introduction of evidence shall be deemed sufficient and shall govern the proof, decision, and administrative and judicial review of all questions of fact if substantial, reliable and probative evi-

dence supports such agency determination. Every agency shall as matter of policy provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every person who is party to such proceedings shall have the right to submit evidence in open hearing and shall have the right of cross examination.. . . Sec. 4-22-1-9 provides in relevant part:

The transcript of testimony adduced and exhibits admitted together with notice, all pleadings, exceptions, motions, requests and papers filed, other than briefs or arguments of law, shall constitute the complete and exclusive record of such hearing and determination of such agency and it shall be available to all parties for examination. Any party may obtain a copy thereof at its expense.. . . Whenever objections are filed to recommended determinations or when a petition for judicial review is filed, such evidence together with the original or a copy of all exhibits admitted and with notice of hearing, all pleadings, exceptions, motions, requests and papers

filed other than briefs or arguments of law shall be incorporated in a transcript and certified to by the officer, agent or by ultimate authority of such agency where the hearing was before such ultimate authority. Such transcript when so prepared and certified shall be admissible without further proof in any subsequent review or proceeding affecting such determination of such agency and shall be prima facie evidence of all facts therein contained as the complete record of such hearing or determination.

Sec. 4-22-1-10 provides in relevant part:

All issues of facts shall be considered and determined upon the record required to be made in conformity with this act /4-22-1-1—4-22-1-30/. Said agency shall make an informal finding of facts which shall encompass the relevant facts shown by the evidence. . . .

Sec. 4-22-1-11 provides in relevant part:

The final order or determination made by the ultimate authority of such agency and where the agency consists of more than one

person it shall be made by at least a majority thereof.. . .

Sec. 4-22-1-11 (Supp. 1977) provides in relvant part:

/A/nd legislature's explicit unmistakable intent . . . . is that judicial review is only available from final decision /of an agengy/.

Sec. 4-22-1-12 provides in relevant part:

Where any statute authorizes an agency to conduct hearings by an agent or representative such agent or representative may conduct the hearing. In the event of such hearing before a member, agent or representative it shall be conducted in the same manner provided for a hearing before the agency except that instead of making an order or determination the said member, agent or representative shall make a recommendation as to the order or determination. After said recommendation is made said member, agent or representative shall present to and file with the agency the complete record of the proceedings before him, other than the

transcript of the oral testimony, together with his recommended order or determination and notice of such filing shall be given all persons who were parties to the hearing. Any interested and affected person may, within ten (10) days thereafter, or within such additional time as may be granted by the agency, file with said agency his objections to the entry of such order. If any such objections are filed the agency shall set the same for hearing. Such hearing shall be on the record so filed with it. The agency may hear additional evidence or refer to the hearing member or agent to hear additional evidence.. . . Notice of all final orders and determinations shall be given promptly to all parties to the hearing by the agency.

Sec 4-22-1-14 provides in relevant part:

Any party or person aggrieved by any order or determination made by any such agency shall be entitled to a judicial review thereof in accordance with the provisions of this act (4-22-1-1—4-22-1-30). Such review may be had

by filing with the circuit or superior court of the county in which such person resides . . . a verified petition setting out such order, decision or determination so made by said agency, and alleging specifically wherein said order, decision or determination is:

(1) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; or

(2) Contrary to constitutional right, power, privilege or immunity; or

(3) In excess of statutory jurisdiction, authority or limitations, or short of statutory right; or

(4) Without observance of procedure required by law; or

(5) Unsupported by substantial evidence.

Said petition for review shall be filed within fifteen (15) days after receipt of notice that such order, decision or determination is made by any such agency. Notice shall be given in the manner described by section 6 (4-22-1-6) of this act. Unless a proceeding

for review is commenced by so filing such petition within fifteen (15) days any and all rights of judicial review and all rights of recourse to the courts shall be terminate.

Written notice of the filing of such verified petition for review and a copy of said petition shall be personally served upon the agency and the attorney general. Where the agency consists of more than one member it shall be personally served upon the secretary of such agency.

Any party or person so filing such verified petition for review with such court shall within fifteen (15) days thereafter secure from such agency a certified copy of the transcript of said proceedings before the agency including the order or administrative adjudication sought to be reviewed and file the same with the clerk of such court in which such action for review is pending. An extension of time in which such transcript shall be granted by said court in which such action for review is pending for good cause shown. Inability to

obtain such transcript within time shall be good cause. Failure to file such transcript within said period of fifteen (15) days, or to secure an extension of time therefor, shall be cause for dismissal of such a petition for review by the court or on petition of any party of record to the original proceeding. Where more than one person may be aggrieved by the administrative adjudication only one (1) proceeding for review may be had and the court in which a petition for review is first properly filed shall have jurisdiction. All persons who were parties to the hearing before the agency shall be made parties to the petition for review and shall be notified thereof by the person filing such petition.

Sec. 4-22-1-18 provides in relevant part:

On such judicial review such court shall not try or determine said cause de novo, but the facts shall be considered and determined exclusively upon the record filed with said court pursuant to this act (4-22-1-1--4-22-1-30).. . . .

If such court finds such finding, decision or determination of such agency is:

(1) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; or

(2) Contrary to constitutional right, power, privilege or immunity; or

(3) In excess of statutory jurisdiction, authority or limitations, or short of statutory right; or

(4) Without observance of procedure required by law; or

(5) Unsupported by substantial evidence,

the court may order the decision or determination of the agency set aside. The court may remand the case to the agency for further proceedings and may compel agency action unlawfully withheld or unreasonably delayed.

Said court in affirming or setting aside the decision or determination of the agency shall enter its written findings of facts, which may be informal but which shall encompass the relevant facts shown by the record,

and enter of record its written decision and order or judgment.

Sec. 4-22-1-20 provides in relevant part:

Whenever a hearing is conducted by an agent or representative of an agency such agent or representative who presides at such hearing shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate. No agent or representative conducting a hearing shall perform any of the investigative or prosecuting functions of said agency in the case heard or to be heard by him or in a factually related case. . . .

Sec. 4-22-1-28 provides in relevant part:

All general or special laws or parts of laws in conflict herewith are hereby specifically repealed.. . .

Sec. 4-22-1-30 provides in relevant part:

The provisions of this act (4-22-1-1—4-22-1-30) shall supersede or control the provisions of any general or special act or part of act in conflict herewith passed by

this general assembly, regardless of whether such act or acts were passed before or after the effective date (March 14, 1947) of this act.

APPENDIX I*

ARTICLES OF INCORPORATION OF THE CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME:

Founded: July 12, 1972.

Amended: February 21, 1975.

Its pertinent parts are as follows: (Noted in NR. 1, pp. 43-44):

The undersigned incorporator or incorporators, desiring to form a Corporation (hereinafter referred to as the "Corporation") pursuant to the provisions of the Indiana Not-For-Profit Corporation Act of 1961, (hereinafter referred to as the "Act"), executed the following Articles of Incorporation.

ARTICLE I

Name

The name of the Corporation is The Corporation of St. Mary's College, Notre Dame.

ARTICLE II

Purposes

The purposes for which the Corporation is formed are:

Generally for any lawful purposes con-

sistent with the Indiana Not-For-Profit Corporation Act of 1971, and specifically:

1. To assume from the Sisters of the Holy Cross Inc. (successor corporation to Saint Mary's Academy, Inc.) all operations of Saint Mary's College, Notre Dame, and

2. To own and operate under the auspices of the Congregation of the Sisters of the Holy Cross, Notre Dame, Indiana, one or more institutions of higher learning /Namely: (1) Dunbarton College, Washington, D.C.; and (2) Cardinal Cushing College, Brookline, Mass./ to further the education of youth and adults, especially of women, without regard to race, creed, or national origin and to award degrees usual to such institutions.

ARTICLE III

Period of Existence

The period during which the Corporation shall continue is perpetual.

ARTICLE IV

Resident Agent and Principal Office

. . . . . .

ARTICLE V

Membership

Section 1. Classes (if any). There shall be two (2) classes of membership.

A. Administrative Members. The administrative members of this corporation shall be a self perpetuating body and shall be eight (8) members in number. . . .

B. General Members. The Members of this corporation shall be those persons who shall be elected to membership by a majority vote of the Administrative Members.. . .

Section 2. Rights, Preferences, Limitations of classes.

A. The Administrative Members shall have the following rights:

1. Election of the Directors (Regents) of the corporation and four (4) members of the Executive Governing Board of the corporation, one of whom shall be the secretary of the corporation.

2. Appointment of the president of the College.

3. Adoption or amendment of the Articles of Incorporation and By-Laws.

4. Authorization of sale, lease, mortgage or hypothecation of assets and borrowing of money for capital needs of the corporation or the merger of the College with another institution.

5. Appointment of the fiscal auditors of the corporation.

6. Election of General Members.

B. The General Members shall have all other rights under the Indiana Not-For-Profit Corporation Act of 1971.

Section 3. Voting Rights of Classes. Each member shall have one (1) vote in all matters pertaining to the corporated affairs.

ARTICLE VI

Directors

Section 1. Number of Directors. The Board of Directors shall be composed of the minimum number of eight (8), and the maximum number of forty (40). Provided, however, that the exact number of Directors shall be prescribed

from time to time in the Bylaws of the Corporation: AND PROVIDED FURTHER THAT UNDER NO CIRCUMSTANCES SHALL THE MINIMUM NUMBER BE LESS THAN THREE (3). The board of Directors shall be referred to as the Board of Regent.

Section 2. Names and Post Office Addresses of the Directors. . ..

ARTICLES VII

Incorporator(s)

Section 1. Names and Post Office Addresses.. . .

ARTICLES VIII

Statement of Property (If Any)

A statement of the property and an estimate of the value thereof, to be taken over by this Corporation at or upon its incorporation is as follows:

The property of the corporation shall consist of personal property to be conveyed by Sisters of the Holy Cross, Inc., to this corporation, the estimated value of which is in excess of Five Hundred Thousand and no/100 ($500,000.00) Dollars.

ARTICLE IX

Provisions for Regulations and

Conduct of the Affairs of the Corporation

(Can be the "Bylaws")

. . . . . .

APPENDIX J*

PETITIONER'S CONTRACTUAL AGREEMENTS WITH ST. MARY'S COLLEGE, NOTRE DAME, IND.

Excerpts from the Plaintiff's Complaint (Cause No. S79-0256), filed with the Trial Court on August 31, 1979 (NR. 1, ¶¶ 14-18, pp. 3-5):

Statements of the Facts in Support of the Claim and Constituting Cause of Action

14. On April 11, 1965, Sisters Maria Renata, President, and Mary Grace (Dr. Dorothea Kos), Vice-President of St. Mary's College and Plaintiff reached an oral contractual agreement about the policy concerning appointments, promotions, and tenure of the latter in the following way:

> "The nature of your /Plaintiff's/ employment in continous in nature. Your accumulated rights and benefits, especially concerning your rank and tenure will be recognized by St. Mary's College. After one year or maximum two, you will be promoted to the rank of full Professor if St. Mary's College is satisfied with your performance, and at the same occasion, you will be accorded a permanent tenure, if you so desire. St. Mary's College will create good working conditions for you . . ., you will be able to go to your professional

conventions, and travel expenses will be paid by St. Mary's College, as was done by the College that previously employed you. You will teach only the subjects in your professional Sociological and Anthropological Fields, and in the specialities in which you are recognized by your peers as qualified and feel yourself competent to teach:
(1) In Anthropology: Prehistoric, Cultural and General Anthropology. (2) In Sociology: Sociological Theory, Family, Sociol. Principles, Systematic Sociology. Your teaching will consist of a load maximum of 9 hours per week, as it was at the time when you were employed by the other Colleges, so that you will be able to do research also."

15. In addition to these contractual agreements, in the letter-contract of April 28, 1965, signed by Sister Maria Renata and by the Plaintiff it was stipulated:

"A statement of policy concerning appointments, promotions, and tenure is found in the Faculty Handbook. These provisions are to be considered a part of your (i.e. Plaintiff's) contract at St. Mary's College."

In succeeding contracts between the Plaintiff and St. Mary's College these provisions about the "policy concerning appointments, promotions and tenure ..." are expressed similarly: "... as set in College Statutes...".

16. St. Mary's College Faculty Handbook of September 1965 states:

"Tenure which is a permanent commitment by St. Mary's College and by the Faculty member until retirement is granted after a probationary period which will not exceeed seven years. If after a probationary period of more than three years in one or more institutions, a teacher is employed by St. Mary's College, it may be agreed in writing the new appointment is for a probationary period of not more than three years, even though the total probationary period is extended beyond the normal maximum of seven years... When the president judges that just cause exists for termination of the appointment of a tenure faculty member, or for dismissal for cause of a teacher previous to the expiration of a term appointment, the matter should be brought to a conclusion by mutual agreement through personal and private conference. When this is not possible, the matter will be subject to review by a Committee functioning according to the procedure set forth in the AAUP (i.e. American Association of the University Professors) Statement of 1940."

17. The Statutes and Bylaws of St. Mary's College, Notre Dame, Indiana. (June 1967) stipulates:

"... The Faculty shall have rights, privileges, duties and responsibilities as set forth in the faculty manual... Academic freedom, tenure, and dismissal proceedings shall be in accordance with the 1940 and 1958 Statements by the Commission on Academic Freedom and Academic Tenure as endorsed by the Association of American Colleges and the American Association of University Professors."

18. These American Association of University Professors' 1940 and 1958 statements that are

endorsed by St. Mary's College and are contractually binding for St. Mary's College, as well as for its Faculty, represent a part of the contractual agreements between the Plaintiff and St. Mary's College and are exhibited in the Plaintiff's Complaint. Parts of these above mentioned American Association of University Professors' statements on the "Academic Freedom and Tenure - 1940 Statement of Principles" read as follows:

> "The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to assure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition. Academic freedom is essential for these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights. Tenure is a mean to certain ends; specifically: (1) Freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are in-

dispensable to the success of an institution in fulfilling its obligations to its students and to society... The teacher is entitled to freedom in the classroom in discussing the subject, but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject... The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position. . . imposes special obligations. . .After the expiration of a probationary period, teachers or investigators should have permanent or continous tenure, and their services should be terminated only for academic cause, except in the case of retirement for age,or under a extraordinary circumstances,because of financial exigencies... Beginning with appointment to the rank of full-time instrutor or a higher rank, the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution... Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period. During the probationary period a teacher should have the academic freedom that all other members of the faculty have. Termination for cause of a continous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before

the hearing in writing of the charges against him and should have the opportunity to be heard in his own defense by all bodies that pass judgment upon his case. He should be permitted to have with him an advisor of his own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from his own or from other institutions... Termination of a continous appointment because of financial exigency should be demonstrably bona fide."